



# County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA  
Chief Executive Officer

February 16, 2010

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

Dear Supervisors:

**APPROVE LEASE LEASE-BACK AGREEMENT  
APPROVE CIVIC PARK DEVELOPMENT AGREEMENT  
APPROVE FUNDING AGREEMENT AND  
OTHER RELATED ACTIONS FOR THE  
CIVIC PARK PROJECT  
(ALL DISTRICTS) (3 VOTES)**

**SUBJECT**

Approval of the recommended actions will authorize the Chief Executive Officer and the Grand Avenue Park Development, LLC to proceed with activities related to the implementation of the Civic Park Project.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Authorize the Chief Executive Officer and Grand Avenue Park Development, LLC to proceed with the Civic Park Project.
2. Approve and delegate the authority to the Chief Executive Officer to sign the Lease Lease-Back Agreement attached hereto in substantially final form between the County and the Grand Avenue Park Development, LLC for the implementation of the Civic Park Project.
3. Approve and delegate the authority to the Chief Executive Officer to sign the Civic Park Development Agreement attached hereto in substantially final form between the County and the Grand Avenue Park Development, LLC for the implementation of the Civic Park Project.

*"To Enrich Lives Through Effective And Caring Service"*

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Intra-County Correspondence Sent Electronically Only***

4. Delegate to the Chief Executive Officer the authority to implement and enforce all of the terms of the Lease Lease-Back Agreement and the Civic Park Development Agreement and to implement the Civic Park Project, on behalf of the County.
5. Approve and delegate the authority to the Chief Executive Officer to sign the Funding Agreement attached hereto in substantially final form between the Grand Avenue Authority and the County to provide for the funding of the Civic Park Project.
6. Direct the Chief Executive Officer to initiate discussions regarding the programming, operations, and maintenance of the Civic Park with the Performing Arts Center of Los Angeles County and return to the Board with an operating agreement in final form for approval prior to the completion of the Civic Park Project.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The recommended actions will allow the County and the Grand Avenue Park Development, LLC (Developer), formerly The Related Companies, L.P., to proceed with activities relating to the implementation of the Civic Park Project (Project).

#### **Background**

The Grand Avenue Authority (Authority) was created in September 2003 through a Joint Powers Agreement between the County and the Community Redevelopment Agency of the City of Los Angeles (CRA) to oversee the development and implementation of the Grand Avenue Project. The Authority is an independent legal entity, which selected The Related Companies, L.P. (Related) as the developer for the Grand Avenue Project in September 2004 through a public selection process. The Grand Avenue Project is a mixed-use development on four County- and CRA-owned parcels that remain undeveloped on Bunker Hill, including full realization of the Civic Park along the County Mall extending from Grand Avenue to Spring Street, and streetscaping along Grand Avenue and the streets surrounding the development.

In February 2007, your Board approved various actions relative to the phased development of the Grand Avenue Project. As part of the Phase I development, Related is required to oversee the design and construction of improvements for an approximately 12-acre Civic Park, which will stretch between and among the County administrative and judicial buildings from Grand Avenue at the Music Center to City Hall at Spring Street. In July 2008, the Authority approved Related's request to assign its rights and obligations under the Civic Park Design Agreement to, and assumption by, a newly-formed entity called the

Grand Avenue Park Development, LLC, which is wholly-owned and controlled by Related. To date, Project construction documents have been completed and submitted to jurisdictional agencies for review and funding is in place. In order to implement the Project, Board approval of the Funding Agreement, Lease and Leaseback Agreement and the Civic Park Development Agreement is now required.

### **Project Description**

The Project, an approximately 12 acre-site located at the heart of Los Angeles's civic and cultural center will remake an often overlooked public space into a spectacular community gathering space that will provide an iconic park for Los Angeles. The proposed Project includes four areas identified as the Fountain Plaza, Performance Lawn, Community Terrace, and Event Lawn.

The Fountain Plaza includes stairs, terraces, planters, accessible ramps and an elevator to accommodate a grade change of approximately 19 vertical feet from Grand Avenue to the Arthur J. Will Memorial Fountain. To achieve pedestrian interest and access to the fountain plaza, this project area will require the demolition, redesign and re-engineering of the existing vehicular ramps to the County Mall garage with garage access to remain off Grand Avenue; restoration of the historic Arthur J. Will Memorial fountain; construction of a new one-story building for the relocation of the current Starbuck's Café, as well as ATM facilities, public restrooms, and park support offices; and installation of landscaping and pathways.

The second area is the Performance Lawn and includes the demolition of the existing Starbuck's Café and existing ATM facilities; reconfiguration and enlargement of the lawn area for performances; creation of a new Olive Tree Courtyard, Children's Garden with children's play sculpture elements; and refurbishment of existing hardscape walks, stairs and site walls.

The third area is referred to as the Community Terrace and consists of the redesign of the existing Court of Flags. This area includes additional garden and planting areas as well as installation of stairs, ramps, relocated flags, and planted terraces to accommodate a grade change of approximately 15 vertical feet from the existing Court of Flags level to Broadway. If funds allow, this area will include multi-cultural botanic gardens with associated wayfinding, plant identification, and educational signage systems. This learning garden provides specimen plantings from over 100 biozones from regions around the world that represent different cultures within Los Angeles.

The final area is called the Event Lawn and includes relocation and engineering of vehicular ramp access to the secured parking at the Clara Shortridge Foltz Criminal Justice Center from Broadway; demolition of the surface parking lot; installation of an event lawn

with high-performance turf; and construction of a marketplace and event staging area to accommodate community markets, event loading, temporary parking and pedestrian pathway.

In April 2009, the CRA and your Board approved the Project schematic design. In June 2009, the Authority unanimously approved the Project schematic design and instructed the architect to proceed with the design development phase. In September 2009, the Authority approved the Project design development drawings based on the prior approval from the Chief Executive Office finding that there was no material variation from the approved schematic design drawings as outlined in the executed Civic Park Design Agreement.

### **Funding Agreement**

As part of the terms of the Disposition and Development Agreement for the Grand Avenue Project, Related agreed to pre-pay to the Authority the leasehold rent for Phase I of the development site and part of Phase II for the purpose of advancing the development of the Project. The cost of the Project will be funded primarily by the Authority with these funds, which were received from Related in July 2007. To facilitate payment of Project expenditures incurred under the Lease Agreement and Park Development Agreement, it is recommended that your Board approve the Funding Agreement (Attachment A) between the County and the Authority. On January 25, 2010, the Funding Agreement was approved by the Authority.

### **Lease Lease-Back Agreement (Lease Agreement)**

In accordance with the Civic Park Design Agreement dated March 2006, a separate agreement is to be entered into by the County and the Developer for construction of the Project. Pursuant to Government Code Section 25371, the County is authorized to ground lease the real property parcels to the Developer to implement the proposed Project in the most timely and cost-effective manner. Accordingly and pursuant to the Lease Agreement (Attachment B), it is recommended that the County lease the Project site to the Developer, who will contract for, manage, and supervise the construction of the Project to be performed by a general contractor retained by the Developer and approved by the County.

Upon completion of the Project, the County is entitled to either lease the Project back from the Developer for \$1.00 for the first year, or exercise an option to purchase the Project for \$1.00, the exercise of which will cause the Lease Agreement to be terminated at that time. Upon final completion of the Project, we will request your Board's approval that the purchase option be exercised, as it is in the best interests of the County to do so. Under the Lease Agreement, if the purchase option is not exercised within the first year after the lease back period commences, the County's lease back of the Project can continue for up

to four one-year extensions for a maximum lease term of five years at \$112,500 per year for Phase I, and \$37,500 per year for Phase II, or until the purchase option is exercised. It is expressly not intended for the Developer to continue as the real property lessee; therefore, it is our intent that the County, exercise its unilateral option to purchase the Project upon completion, thereby avoiding the increased annual rental amounts.

### **Civic Park Development Agreement (Park Development Agreement)**

Although technically a separate instrument, the Park Development Agreement is an integral part of the Lease Agreement transaction and sets forth the rights and obligations of the Developer and the County concerning the design and construction of the Project. The Project will be constructed in two separate phases. Phase I consists of the Fountain Plaza, Performance Lawn, and Event Lawn currently known as the Civic Center Mall (also known as the El Paseo de los Pabladores), and the surface parking lot east of the Court of Flags and bounded by Spring Street on the east. Phase II consists of the Community Terrace currently known as the Court of Flags. Due to the limited amount of funding identified for the Project, the CEO will only authorize the Developer to commence the Phase II scope of work if there is sufficient funding remaining in the budget to complete the entire Project. The County and public will not have use of the Project site during construction except for limited purposes, including emergencies, access to Starbucks, and for facility maintenance purposes.

Under the Park Development Agreement, the Developer is required to contract for and manage the construction of the Project. In December 2009, the Developer recommended, and the County approved, four pre-qualified construction firms to provide proposals for construction of the Project. In January 2010, all four firms submitted general contractor proposals and interviews were conducted with all four firms. The County has received and accepted the Developer's recommendation to begin negotiations with one firm. Upon completion of negotiations, the Developer will deliver a proposed guaranteed maximum price for the Project to the CEO. If the guaranteed maximum price is within the approved project construction budget, the CEO will approve the guaranteed maximum price contract. If the guaranteed maximum price is not within the approved project construction budget, the CEO may reject the guaranteed maximum price contract and the Developer will cause the general contractor to seek new bids or provide additional value engineering services in an attempt to conform the guaranteed maximum price contract within the approved budget amount.

It is recommended that your Board delegate to the CEO, as the owner representative, the authority to monitor the Park Developer's performance, approve contractors and subcontractors proposed by the Developer, approve and make payments to the Developer up to the maximum amount authorized under a Funding Agreement between the County and the Authority, approve and execute amendments to agreements, approve change

orders up to \$150,000, if necessary approve cost cutting measures, reclassify line items within the approved project budget, accept the project, and make any other project approvals as required for implementation of the Park Improvements. Any change order over \$150,000 will require approval by the Authority.

The construction contract contains standard County contract language such as provisions regarding good faith efforts to recruit Community Business Enterprises, all required insurance coverage while under construction naming the County as an additional insured, non-discrimination clauses, and the standard clause for termination of services upon written notice.

It is anticipated that final construction documents will be completed in Spring 2010. Pursuant to Section 3.2 of the Civic Park Design Agreement, approval of the construction documents must be obtained from both your Board and the CRA prior to the approval of Authority. Construction is tentatively scheduled to take place over a 24-month duration to begin in Spring 2010 and end in Summer 2012. Upon the expiration or earlier termination of the Lease Agreement, ownership of the Project shall vest in the County.

The events of default under the Lease Agreement include failure of the Developer or County, respectively, to perform its obligations as set forth in the Park Development Agreement, to perform its obligations as set forth in the Lease Agreement, or the filing of a petition for reorganization or arrangement under any law related to bankruptcy. Upon written notice of a default, the Developer or County, as the case may be, has a 30 day cure period to remedy the default. In the event of continuing nonperformance of any material default by the Developer beyond the notice and 30-day cure periods, the County may elect to purchase the Project on any date, at a price equal to any earned but unpaid costs of the Project; take possession of the Project and require performance of all covenants and obligations; enter the Project and remove any and all persons or property and dispose of such property in accordance with applicable laws; or require the Developer to assign the construction contract to the County or its designee. Further, any material default and breach of the Developer to perform its obligations as set forth in the Park Development Agreement shall also constitute a default under the Disposition and Development Agreement for the Grand Avenue Project which may result in termination of the Disposition and Development Agreement by the Authority.

### **Civic Park Operations**

Throughout the proposed Project, open spaces are being developed not only for casual sitting and leisurely strolling but also in anticipation of possible civic gatherings. The four block site is divided by two city streets and includes a challenging 18' -20' grade change between each of the four blocks. The Project ties the site together to create a connected, unified park. Using the site's severe grade change as an asset, the Project envisions generous amphitheater steps and planted terracing providing integrated accessible

pedestrian ramps where there are none, and creating space that can serve as seating. Programming for small to large events and festivals is a crucial cornerstone of the planning of the park. Gathering spaces of varying sizes are designed to support the needs of community groups, neighbors, schoolchildren, or even sponsored events. Other program spaces include the smaller Performance Lawn for more intimate events, the Fountain Plaza for possible corporate parties and the Community Terrace for multicultural feasts engaging the County's diverse population. The proposed uses can be separated into two general categories: "formal" uses, in which programming animates the park and attracts visitors for a specific event, such as a festival, concert, or farmers' market; and "informal" uses, in which visitors animate the park through a combination of their own individual activities, such as strolling, reading, or picnicking.

In order for the park to be successful, it must accommodate and encourage a wide range of formal and informal activities much like the programs offered at the four venues of the Music Center operated on behalf of the County by the Performing Arts Center of Los Angeles County. Although the Civic Park programming will be different from a theatrical venue, the proposed park and its programs will be a logical extension of the Music Center venues. It is recommended that the CEO initiate discussions with the Performing Arts Center of Los Angeles County regarding the programming, maintenance and other ongoing issues and return to the Board prior to completion of the Project with an operating agreement for the Board's approval.

### **FISCAL IMPACT/FINANCING**

The total estimated cost of the proposed project is \$56.0 million, including \$38.0 million for hard construction costs, \$7.0 million for contingency fund, and \$11.0 million for project soft costs.

The proposed project is funded by \$50,750,000 Grand Avenue Project, \$970,000 City of Los Angeles Proposition 40 allocation, and \$4,280,000 anticipated interest income earned on the deposit of funds from the Grand Avenue Project until the proposed project completion.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The Civic Park Design Agreement dated March 20, 2006 by and between the Authority and the Developer, anticipated a separate agreement governing the construction of the Park Improvements to be entered into by the County and the Developer.

The attached Lease Agreement includes various Board-mandated provisions, including but not limited to: County Lobbyist Ordinance, hiring qualified displaced County employees, Safely Surrendered Baby Law, Child Support Compliance Program, Contractor Employee Jury Service Program, and Defaulted Property Tax Reduction Program.

The attached Lease Agreement, Park Development Agreement, and Funding Agreement have been reviewed and approved by the Developer and its counsel and reviewed and approved as to form by County Counsel prior to execution by all parties.

### **ENVIRONMENTAL DOCUMENTATION**

On February 13, 2007, acting as a responsible agency, your Board certified the Grand Avenue Project Environmental Impact Report as prepared and certified by the Grand Avenue Authority as lead agency for the Grand Avenue Project. The recommended action is within the scope of the Project in the previously certified Environmental Impact Report.

### **CONCLUSION**

Upon approval of the recommendations, please forward an adopted copy of the Board letter to the Chief Executive Office, Capital Projects Division.

Respectfully submitted,



WILLIAM T FUJIOKA  
Chief Executive Officer

Attachments (3)

WTJ:SK:DJT  
DKM:zu

c: County Counsel  
The Los Angeles Grand Avenue Authority  
Grand Avenue Park Development, LLC

## FUNDING AGREEMENT

THIS FUNDING AGREEMENT ("**Agreement**") is entered into as of \_\_\_\_\_, 20\_\_ by and between the COUNTY OF LOS ANGELES, a political subdivision of the State of California ("**County**") and THE LOS ANGELES GRAND AVENUE AUTHORITY, a California joint powers authority ("**Authority**").

### RECITALS:

A. Authority and Grand Avenue L.A., LLC ("**GALA**"), are parties to that certain Disposition and Development Agreement dated as of March 5, 2007 (the "**DDA**") pertaining to the development of certain real property adjacent to the Los Angeles downtown Civic Center and Music Center with retail, hotel, office and housing (including affordable housing), together with destination urban park uses and the remaking of Grand Avenue into active and inviting pedestrian uses, all as more particularly described in the DDA (collectively, the "**Grand Avenue Project**").

B. The Grand Avenue Project includes the redevelopment of an approximately twelve (12) acre area that is owned by County, which consists of the current Civic Center Mall (also known as El Paseo de los Pobladores), including the Court of Flags, and a parcel of land east of the Court of Flags and bounded by Spring Street on the east (the "**Park Parcel**").

C. GALA's affiliate, Grand Avenue Park Development, LLC, a Delaware limited liability company ("**Park Developer**") and County have entered into a Lease Lease-Back Agreement (the "**Lease-Leaseback**"), pursuant to which County is ground leasing the Park Parcel to Park Developer and authorizing Park Developer to construct certain improvements on the Park Parcel for the use and benefit of County and the Authority, as more particularly described in the Lease-Leaseback (referred to herein collectively as the "**Park Improvements**" or the "**Park**").

D. Concurrently with the Lease-Leaseback, County and Park Developer have also entered into a Civic Park Development Agreement which sets forth the rights and obligations of Park Developer and County concerning the development and construction of the Park Improvements (the "**Park Development Agreement**").

E. The budget for the design and construction of the Park Improvements is attached to the Park Development Agreement as Exhibit "C" (as it may be amended from time to time, the "**Park Budget**"). The Park Budget currently contemplates a total cost of the Park Improvements of Fifty-Six Million Dollars (\$56,000,000), which shall be funded by, (i) funds in the aggregate amount of Fifty Million Seven Hundred Fifty Thousand Dollars (\$50,750,000), including all interest accrued thereon, that were paid by GALA to Authority under the DDA and related documents in connection with the Grand Avenue Project, and (ii) Nine Hundred Seventy Thousand Dollars (\$970,000) in bond proceeds, under an agreement under Proposition 40 (i.e., the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002) with the City. The aforementioned funds for the Park Improvements, together with any additional funds that may be added to the Park Budget in the event of the disbursement by the State of California of bond proceeds under California State Proposition 1C (i.e., the California

Housing and Emergency Shelter Trust Fund Act of 2006) for the development of certain infrastructure, are referred to herein collectively as the "**Park Funds.**"

F. Pursuant to the Joint Exercise of Powers Agreement dated as of September 2, 2003 (the "**Joint Powers Agreement**") by and between the County and The Community Redevelopment Agency of the City of Los Angeles, California (the "**CRA**"), the Park Funds are held by the Los Angeles County Treasurer on behalf of Authority. Specifically, pursuant to Section 5.03 of the Joint Powers Agreement, any and all funds designated for the redevelopment of the Park Parcel are required to be maintained by the Los Angeles County Treasurer in an independent interest bearing trust account or fund. Pursuant to the Joint Powers Agreement, the Park Funds are earmarked to be utilized for the Park Improvements and shall not be used for any other purpose.

G. Authority and County desire to enter into this Agreement to set forth the procedure for Authority's authorization of the release of Park Funds to the County to fund the Park Improvements, as more particularly set forth hereinbelow. Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Park Development Agreement.

NOW, THEREFORE, the parties agree, in consideration of the mutual covenants and agreements herein, as follows:

1. **Copies of Deliverables.**

(a) In order to keep Authority fully informed regarding the progress of the construction of the Park, Park Developer shall provide the staff of the Grand Avenue Committee or any successor thereto designated by Authority (the "**GAC**") with copies of all items that Park Developer is required to deliver to County pursuant to the Park Development Agreement and Lease-Leaseback (including, without limitation, plans, budgets, the proposed GMP, the monthly Construction Reports referenced in Section 4.6(i) of the Park Development Agreement, the Construction Contract and Change Orders) (referred to herein collectively as "**Required Deliverables**").

(b) In addition to the Required Deliverables, Park Developer shall also provide the GAC staff with copies of all other notices and correspondence provided by Park Developer to County (including, without limitation, Delay Notices and Park Developer's requests for reimbursement for Reimbursable Expenses under Section 6.2 of the Park Development Agreement).

(c) County shall copy the GAC on all notices and other deliverables given by County to Park Developer under the Park Development Agreement and the Lease-Leaseback.

2. **Funding Procedure.** Upon approval by the Chief Executive Officer of the County (the "**CEO**") of Park Developer's invoices and reimbursement requests in accordance with the procedures set forth in the Park Development Agreement, and subject at all times to the Park Budget, the CEO is authorized on behalf of Authority to draw the amount required to pay such

approved invoices and reimbursement requests from the Park Funds held by the Los Angeles County Treasurer for the benefit of Authority.

3. **Other Provisions.**

3.1 **Additional Insureds.** Park Developer shall cause the General Contractor to name Authority, County, the GAC, the City of Los Angeles and the CRA as additional insureds on the General Contractor's insurance policies.

3.2 **Third Party Beneficiaries.** Park Developer and the General Contractor are express third party beneficiaries of this Agreement.

3.3 **Indemnification Requirements.** Section 895.2 of the Government Code of the State of California imposes joint civil liability upon public entities solely by reason of such entities being parties to an agreement, as defined by Government Code Section 895.

(a) Pursuant to Government Code Sections 895.4 and 895.6, County and Authority shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by any negligent or wrongful act or omission occurring in the performance of this Agreement.

(b) County and Authority each indemnifies and holds harmless the other party for any loss, costs, or expenses that may be imposed upon such other party by virtue of Government Code Section 895.2.

(c) In the event of third-party loss caused by negligence, wrongful act or omission by both parties, each party shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed or judicially determined. The provisions of Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated.

3.4 **Notices, Demands and Communications Between the Parties.** Formal notices, demands and communications between the parties shall be sufficiently given if, and shall not be deemed given unless, (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the addresses for the notice party set forth below, (b) delivered by an express delivery service with a receipt showing date of delivery to the addresses for the notice party set forth below, (c) personally delivered to the intended addressee, or (d) sent during normal business hours by confirmed electronic mail or confirmed facsimile transmission. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time-to-time designate by mail. Delivery shall be deemed to have occurred upon substantiated receipt of delivery (or refusal of delivery).

**If to County :**

County of Los Angeles  
500 W. Temple Street, Room 713  
Los Angeles, California 90012  
Attention: Chief Executive Officer

If to Authority or GAC:

c/o Zimmer Gunsul Frasca Architects LLP (ZGF)  
515 South Flower Street, Suite 3700  
Los Angeles, CA 90071  
Attention: Martha Welborne, Managing Director

3.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.6 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

[Remainder of Page Intentionally Left Blank]

By executing below, Park Developer hereby consents to and agrees to comply with the terms of Sections 1 (a), 1(b), and 3.1 of the Agreement.

Acknowledged and agreed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRAND AVENUE PARK DEVELOPMENT, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Kevin Ryan, Vice President

By: \_\_\_\_\_  
Stephen F. Eimer, Vice President

PHJW DRAFT 12/17/2009

**LEASE LEASE-BACK AGREEMENT**  
**BETWEEN**  
**THE COUNTY OF LOS ANGELES**  
**AND**  
**GRAND AVENUE PARK DEVELOPMENT, LLC**

**DATED \_\_\_\_\_, 2009**

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## **LEASE LEASE-BACK AGREEMENT**

THIS LEASE LEASE-BACK AGREEMENT (this "**Lease Agreement**") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between THE COUNTY OF LOS ANGELES, a political subdivision of the State of California ("**County**"), and GRAND AVENUE PARK DEVELOPMENT, LLC, a Delaware limited liability company ("**Park Developer**").

### **RECITALS**

A. It is the intention of County to cause a park to be built on an approximately twelve (12) acre area that is owned by County, which consists of the current Civic Center Mall (also known as El Paseo de los Pobladores), including the Court of Flags, and a parcel of land east of the Court of Flags and bounded by Spring Street on the east, a portion of which is more particularly depicted and described on Exhibit A-1 attached hereto ("**Blocks 1, 2 & 4**"), and the remaining portion of which is more particularly depicted and described on Exhibit A-2 attached hereto ("**Block 3**"; and together with Blocks 1, 2 & 4, collectively, the "**Park Parcel**").

B. It is the desire of County to ground lease the Park Parcel to Park Developer and to authorize Park Developer to contract for, and manage, the design and construction of, improvements at the Park Parcel (the "**Park Developer Work**") described in Exhibit B attached hereto, for the use and benefit of County (collectively, the "**Park Improvements**"; together with the Park Parcel, collectively, the "**Park**").

C. The Grand Avenue Authority ("**Authority**") and Park Developer's affiliate, Grand Avenue L.A., LLC ("**GALA**"), are parties to that certain Disposition and Development Agreement dated as of March 5, 2007 (the "**DDA**") pertaining to the development of certain real property adjacent to the Los Angeles downtown Civic Center and Music Center with retail, hotel, office, and housing (including affordable housing), together with destination urban park uses and the remaking of Grand Avenue into active and inviting pedestrian uses, including development of the Park Improvements on the Park Parcel, all of which improvements are collectively known as the "**Grand Avenue Project**".

D. Authority and The Related Companies, L.P., a New York limited partnership ("**Related**") entered into that certain Civic Park Design Agreement dated as of March 20, 2006 (as may be amended from time to time, the "**Civic Park Design Agreement**") pursuant to which Related is obligated to cause the design of the Park Improvements to occur within the time periods set forth therein. Pursuant to a consent letter dated as of July 28, 2008, Authority consented to Related's assignment of its obligations under the Civic Park Design Agreement to Park Developer, upon the terms and conditions set forth in such consent letter. Such consent letter provides, among other things, that all references in the DDA to GALA completing the Park may also mean completion of the Park by Park Developer on behalf of GALA.

E. This Lease Agreement, including all of the attachments that are incorporated by reference herein, sets forth the rights and obligations of Park Developer and County concerning the development, design and construction of the Park Improvements.

F. The budget for the costs associated with the design and construction of the Park Improvements is attached hereto as Exhibit C (as it may be amended from time to time, the "**Park Budget**"). The Park Budget currently contemplates a total cost of the Park Improvements in the not-to-exceed, aggregate amount of Fifty-Six Million Dollars (\$56,000,000) and shall be funded by, (i) funds in the aggregate amount of Fifty Million Seven Hundred Fifty Thousand Dollars (\$50,750,000), and all interest accrued thereon, held by County on behalf of Authority that were paid by GALA to Authority under the DDA and related documents in connection with the Grand Avenue Project, and (ii) Nine Hundred Seventy Thousand Dollars (\$970,000) in bond proceeds, under an agreement under Proposition 40 (i.e., the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002) with the City of Los Angeles (the "**City**"). Any increase in the Park Budget above the aforementioned amount is contingent upon disbursement by the State of California to the Authority of bond proceeds under California State Proposition 1C (i.e., the California Housing and Emergency Shelter Trust Fund Act of 2006) for the development of certain infrastructure.

G. It is the desire of County that Park Developer perform the Park Developer Work in accordance with the terms of that Civic Park Development Agreement (the "**Park Development Agreement**") entered into concurrently herewith by and between County and Park Developer in the form attached hereto as Exhibit D.

H. County is authorized, pursuant to Government Code Section 25371, to ground lease the Park Parcel to Park Developer, and contract with Park Developer to perform the Park Developer Work, and lease back the completed Park from Park Developer.

I. County desires to lease to Park Developer portions of the Park Parcel in two (2) separate phases so that the Park Improvements may be constructed in corresponding phases. The first phase shall consist of Blocks 1, 2 and 4 ("**Phase One**") and the second phase shall consist of Block 3 ("**Phase Two**").

J. The approved Design Development Drawings as approved by Authority on September 28, 2009, portray the scope of Park Improvements which will ultimately progress into Final Construction Documents as outlined in the Civic Park Design Agreement.

K. County has designated and authorized County's Chief Executive Office ("**CEO**") to act as County's representative for the purpose of monitoring Park Developer's performance of the Park Developer Work and performing certain obligations of County. County may, from time to time, by a notice to Park Developer or as specified in this Lease Agreement, delegate in writing certain of its rights of approval and review hereunder to such other person(s) or entity(s) as County reasonably deems appropriate.

NOW, THEREFORE, in consideration of the payments and the performance of the mutual promises and agreements herein contained at the time and in the manner specified, the parties hereto agree as follows:

## **PART A: DEFINITIONS**

1. **Definitions.** Capitalized terms used herein shall have the meanings set forth below. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Park Development Agreement and Civic Park Design Agreement.

**"Acceptance Date"** means, in respect of the applicable Phase, the date on which Substantial Completion is achieved for such Phase.

**"Additional Rent"** means all other sums due to Park Developer hereunder.

**"Architect"** means Rios Clementi Hale Studios, a California corporation.

**"Architect's Agreement"** means that certain Park Design Services Agreement/Consultant Contract for Civic Park dated as of January 13, 2009, by and between Park Developer and Architect.

**"Authority"** has the meaning set forth in Recital C.

**"Base Rental"** means, in respect of the applicable Phase, during each year of the Lease-Back Term and for the first year following Final Completion of such Phase, one dollar (\$1.00) annually, and thereafter, (i) one hundred twelve thousand five hundred dollars (\$112,500) per annum for Phase One, in equal monthly installments of nine thousand three hundred seventy-five dollars (\$9,375), and (ii) thirty-seven thousand five hundred dollars (\$37,500) per annum for Phase Two, in equal monthly installments of three thousand one hundred twenty-five dollars (\$3,125).

**"Blocks 1, 2 & 4"** has the meaning set forth in Recital A.

**"Block 3"** has the meaning set forth in Recital A.

**"CEO"** has the meaning set forth in Recital K.

**"City"** has the meaning set forth in Recital F.

**"Civic Park Design Agreement"** has the meaning set forth in Recital D.

**"Claim(s)"** has the meaning set forth in Section 19.

**"County"** has the meaning set forth in the Preamble.

**"CRA"** means the Community Redevelopment Agency of Los Angeles.

**"Damages"** has the meaning set forth in Section 19.

**"DDA"** has the meaning set forth in Recital C.

**"Developer Indemnified Parties"** has the meaning set forth in Section 19.

**"Dispute"** has the meaning set forth in Section 63.

**"Effective Date"** has the meaning set forth in Section 6.1.

**"Final Completion"** means, in respect of the applicable Phase, the date on which (i) Substantial Completion has been achieved for such Phase, (ii) the items on the Punchlist for such Phase have been completed as certified by CEO and the Architect, and (iii) all documents required to be provided to CEO pursuant to the Architect's Agreement, Park Development Agreement and Construction Contract have been delivered to CEO for such Phase.

**"Fiscal Year"** means July 1 through June 30.

**"GAC"** means the Grand Avenue Committee.

**"GALA"** has the meaning set forth in Recital C.

**"Grand Avenue Project"** has the meaning set forth in Recital C.

**"Hazardous Materials"** shall include, without limitation: those substances included within the definitions of "hazardous substances", "Hazardous Materials", "toxic substances", or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended; those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor Agency) as hazardous substances (40 CFR Part 302 and amendments thereto); any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §§ 1317); (E) flammable explosives; or (F) radioactive materials; any toxic or hazardous waste, material or substance or any oil or pesticide listed in, covered by, or regulated pursuant to, any state or local law, ordinance, rule or regulation applicable to the Park Parcel, as heretofore or hereafter amended; and such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulation.

**“Hazardous Materials Laws”** means all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions.

**“Impositions”** has the meaning set forth in Section 11.4.

**“Lease Agreement”** has the meaning set forth in the Preamble.

**“Lease-Back Term”** means, in respect of the applicable Phase, the period commencing on the Acceptance Date and expiring on the Lease-Back Termination Date.

**“Lease-Back Termination Date”** means, in respect of the applicable Phase, the date on which the earliest of the following occurs: (i) the Option for such Phase is exercised by County, (ii) the last day in the fifth (5th) year following the Final Completion of such Phase, (ii) the Project Term expires or is terminated.

**“Option”** has the meaning set forth in Section 12.1.

**“Option Price”** means one dollar (\$1.00).

**“Park”** has the meaning set forth in Recital B.

**“Park Budget”** has the meaning set forth in Recital F.

**“Park Developer”** has the meaning set forth in the Preamble.

**“Park Developer Work”** has the meaning set forth in Recital B.

**“Park Development Agreement”** has the meaning set forth in Recital G.

**“Park Improvements”** has the meaning set forth in Recital B.

**“Park Parcel”** has the meaning set forth in Recital A.

**“Phase”** means either Phase One or Phase Two, as applicable.

**“Phase One”** has the meaning set for in Recital I.

**“Phase Two”** has the meaning set for in Recital I.

**“Phase Term”** has the meaning set forth in Section 6.2.

**“Project Term”** has the meaning set forth in Section 5.

**“Punchlist”** means, in respect of the applicable Phase, a list of minor touch-ups, corrections, and repairs, and completion of other minor work for such Phase required by the Final Construction Documents.

**“Related”** has the meaning set forth in Recital D.

**“Release”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Materials into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Materials).

**“Substantial Completion”** means, for the applicable Phase, the completion of the portion of Park Improvements applicable to such Phase as certified by CEO and the Architect that (i) such Park Improvements have been completed sufficiently that they can be used for their intended use, (ii) a certificate of occupancy (or functional equivalent) for the applicable portion of the Park for such Phase has been obtained, (iii) all applicable Construction Work for such Phase has been completed except for Punchlist items that do not materially interfere with the use of such portion of the Park.

## **PART B: CONSTRUCTION TERMS**

2. **Park Improvements and Funding.** Pursuant to, and in accordance with, the terms of, the Park Development Agreement, (i) Park Developer shall perform the Park Developer Work, and (ii) County, and not Park Developer, shall be obligated to pay for costs associated with the Park prior to, during and after the Project Term, but not for any costs arising out of the willful misconduct of, active negligence of, or material breach of the Park Development Agreement by, Park Developer.

3. **No Title Retention Agreements.** No materials, equipment, fixtures or articles of personal property placed on the Park Parcel or constructed in the Park Improvements shall be purchased or installed under any security agreement or other agreement where the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider them personal property after their incorporation in the Park Improvements, unless authorized by County in writing.

4. **Cooperation.** The parties hereto will cooperate at all times in bringing about the timely completion of the Park Improvements, and will act in good faith to resolve all disputes arising during the performance of the Park Developer Work in a manner which will allow work to proceed expeditiously.

## **PART C: LEASE AND LEASE-BACK TERMS**

5. **Effectiveness; Term of Lease Agreement.** This Lease Agreement shall become effective on, and the term hereof shall commence on the date upon which the applicable parties have fully executed and delivered this Lease Agreement and the Park Development Agreement (the **“Effective Date”**), and shall expire upon (i) if the NTP for Phase Two is issued prior to the Acceptance Date of Phase One, the later to occur of (a) the Lease-Back Termination Date for Phase One and (b) the

Lease-Back Termination Date for Phase Two, or (ii) if the NTP for Phase Two is not issued prior to the Acceptance Date of Phase One, the Lease-Back Termination Date for Phase One, but, in any event, no later than twenty (20) years after the Effective Date, unless terminated earlier as provided herein (the "**Project Term**"). Notwithstanding the foregoing, the actual lease and/or lease-back of any portion of the Park Parcel shall commence and expire as set forth in Section 6.

6. **Lease and Lease-Back.**

6.1 **Phasing.** County shall lease to Park Developer, and Park Developer shall lease back to County, portions of the Park Parcel in Phases as set forth below.

6.2 **Lease for Phase Term.** Commencing on the date on which the NTP for a Phase is issued pursuant to Section 4.5 of the Park Development Agreement and expiring on the Lease-Back Termination Date for such Phase unless terminated earlier as provided herein (a "**Phase Term**"), County thereby leases to Park Developer, and Park Developer thereby leases from County, the portion of the Park Parcel applicable to such Phase (i.e. either Blocks 1 & 3 or Block 2) and the improvements then existing thereon, together with a reasonable right of nonexclusive ingress and egress thereto, to carry out the terms of this Lease Agreement and the Park Development Agreement as consideration for such lease. County reserves all other right, title and interest it may have in and to such portion of the Park Parcel.

6.3 **Lease-Back Term.** Commencing on the Acceptance Date for an applicable Phase and for the duration of the Lease-Back Term for such Phase, Park Developer hereby agrees to lease back to County, and County hereby agrees to accept and rent from Park Developer, the portion of the Park applicable to such Phase, subject to Section 10.3.

6.4 **Title to Park Improvements.** Upon expiration or earlier termination of the Lease-Back Term for any Phase, the portion of the Park Improvements applicable to such Phase shall become the property of County, subject to Section 10.3.

7. **Title to the Park Parcel.** Fee simple title to the Park Parcel shall remain in County, subject to the terms and conditions of this Lease Agreement.

8. **Warranty of Park Parcel and Hazardous Substances.** The County hereby warrants and represents that it possesses unencumbered fee title to the Park Parcel and that it has no knowledge or reason to believe that Hazardous Substances, with the potential exception of materials commonly used for cleaning and maintenance used and stored in accordance with all Hazardous Materials Laws, have been released on the Park Parcel.

9. **Insurance During Lease-Back.** From and after the Acceptance Date for any Phase, County shall insure the portion of the Park applicable to such Phase consistent with County's normal practice and policies. County, at its sole option, may elect to self-insure all or any portion of such portion of the Park. Park Developer shall be named as an additional insured under any such policies of insurance obtained from insurance carriers until the Lease Back Termination Date.

10. **Alterations; Maintenance; As-Is Without Warranty.**

10.1 **Additions and Improvements.** County shall have the right, at County's expense, during the Lease-Back Term for any Phase to make any additions or improvements to the portion of the Park Improvements applicable to such Phase to attach fixtures, structures or signs, and to affix any personal property to the Park Improvements; provided, however that such additions or alterations shall not interfere with the performance of Park Developer's obligations under the Park Development Agreement. Title to all fixtures, equipment or personal property placed by County on such Park Improvements shall remain in County. The title to any personal property, improvements or fixtures placed on such Park Improvements by any sublessee or licensee of County shall be controlled by the sublease or license agreement between such sublessee or licensee and County, which sublease or license agreement shall not be inconsistent with this Lease Agreement. The County may remove, during or at the expiration or other termination of the Lease-Back Term for any Phase, all fixtures, equipment and personal property placed on, or installed in or upon the portion of the Park Improvements applicable to such Phase by County or under its authority, subject to Section 10.3.

10.2 **Post-Acceptance Obligations.** Park Developer shall not be responsible for the following:

10.2.1 **Maintenance.** All work, costs and expenses related to Park maintenance following the Acceptance Date for any Phase, including, without limitation, maintaining the Park in good condition, making all necessary renewals, replacements, additions, improvements, and repairs, ordinary or extraordinary; provided, however, Park Developer shall have the obligations set forth in Section 9.3 of the Park Development Agreement.

10.2.2 **Utilities.** All work, costs and expenses related to utility services supplied to the Park for any Phase, including, without limitation, janitor service, power, gas, telephone, light, heating, water, security service, garbage and refuse removal and all other necessary utility services.

10.2.3 **Operations.** All work, costs and expenses related to the operation of the Park, including, without limitation, establishing the Park operating entity, developing the organization of such operations, hiring a park executive director, operational staff and third parties, fund raising, event planning, operational design revisions, marketing, advertising, booking, opening functions and celebrations or any other necessary operational issues. Notwithstanding the foregoing, the Park Budget currently includes an allowance of \$865,700 in the aggregate for pre-opening costs and expenses associated with the foregoing incurred by County prior to the Acceptance Date for all Phases.

10.3 **No Warranty; As Is.** Effective as of the Effective Date and continuing throughout the Project Term and expiration or earlier termination thereof, including, without limitation, upon the commencement of the Lease-Back Term for each Phase and upon the expiration or earlier termination thereof, County hereby acknowledges and agrees that (a) Park Developer has not made, does not make and shall not make any representations or warranties of any nature as to the Park,

including any representation or warranty as to the value, physical condition, layout, square footage, rents, income, expenses, operation, zoning, merchantability, habitability, marketability, profitability, suitability or fitness for a particular purpose or use or any other matter or thing affecting or relating to the Park, (b) County is not relying upon any statement or representation made by Park Developer with respect to the Park, (c) County accepts the Park in "AS IS" condition, "WITH ALL FAULTS"; that is, the condition or state in which they exist upon the date thereof, without representation or warranty of any nature whatsoever, expressed or implied, in fact or by law, including without limitation, representations or warranties as to the value, condition, layout, square footage, rents, income, term or duration, expenses, operation, zoning, merchantability, habitability, marketability, profitability, suitability or fitness for a particular purpose or use; provided, however, Park Developer shall have the obligations set forth in Section 9.3 of the Park Development Agreement.

**11. Rent.**

**11.1 Payment of Rent.** County shall pay from legally available funds the Base Rental and Additional Rental, at the times and in the manner set forth herein, such amounts constituting in the aggregate the total of the rental payable under this Lease Agreement.

**11.2 Base Rental.** During a Lease-Back Term of an applicable Phase, County agrees to pay to Park Developer the Base Rental.

**11.3 Timing.** Rental payments to be made by County pursuant to Section 11.2, (i) annually shall be paid within fifteen (15) days after the first day of each and every year of the Lease-Back Term for each Phase provided that Park Developer has caused a claim therefor for each such year to be filed with County Auditor of County of Los Angeles prior to the first day of each year, and (ii) monthly shall be paid on the first (1st) day of each and every month.

**11.4 Additional Rental.** In addition to the Base Rental, County agrees to pay as Additional Rental, all taxes and assessments of any nature whatsoever, including but not limited to possessory interest taxes or similar property tax levies, excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes (collectively, "Impositions"), if any, levied upon the Park Improvements or upon Park Developer's interest therein or in this Lease Agreement. Park Developer shall notify County in writing of any such levy within ten (10) days of Park Developer's receipt of such levy. Amounts constituting Additional Rental payable hereunder shall be paid by County directly to the person or persons to whom such amounts shall be payable. County shall pay all such amounts when due or within thirty (30) days after notice in writing from Park Developer to County stating the amount of Additional Rental then due and payable and the purpose thereof. Notwithstanding the foregoing, payment of all Impositions is the responsibility of County and Park Developer shall have no liability therefor.

**11.5 Consideration.** The payments of Base Rental and Additional Rental under this Lease Agreement for each Fiscal Year or portion thereof during the Lease-Back Term for each Phase shall constitute the total rental of such Fiscal year or portion thereof and shall be paid by County for and in

consideration of the right to the use and occupancy, and the continued quiet use and enjoyment, of the portion of the Park Improvements applicable to such Phase by County for and during such Fiscal year or portion thereof.

12. **Purchase Option.**

12.1 **Option.** During the Lease-Back Term for each Phase, County shall have an exclusive right and option, which shall be irrevocable during the term of this Lease Agreement, to purchase on behalf of itself or its designee all but not less than all of the portion of the Park Improvements applicable to such Phase at any time upon payment of the Option Price by County, but only if County is not in default under this Lease Agreement or the Park Development Agreement (each, an "**Option**").

12.2 **Option Exercise Procedure.** Said Option shall be exercised as follows: County shall cause a "Notice of Intention to Exercise Option to Purchase" covering the subject property to be published in accordance with Government Code Section 25350 or applicable statute, if any, then prevailing. The above-referenced notice shall be provided to Park Developer, and the notice and the required publication are not to be construed as any exercise of said Option, said exercise occurring only after all the statutory requirements have been properly satisfied and the Board of Supervisors of County of Los Angeles meets pursuant thereto and exercises said Option. If County fails to give such notice prior to the expiration of the Lease-Back Term, County shall be deemed to have exercised the Option on the last day of the Lease-Back Term.

12.3 **Lease Termination.** If County shall choose to exercise an Option provided in this **Section 12** prior to the expiration of the applicable Phase Term, then the Lease-Back Term shall terminate, but such termination shall not affect County's obligation to pay the Option Price on the terms set forth herein. In the event that the Option for each Phase has been exercised prior to the expiration of the Project Term, then this Lease Agreement shall terminate, but such termination shall not affect County's obligation to pay the applicable Option Price for each Option on the terms set forth herein.

13. **Right of Entry.** Representatives of Park Developer shall, subject to reasonable security precautions, have the right to enter upon the Park Improvements during reasonable business hours (and in emergencies at all times) (i) to inspect the same, (ii) for any purpose connected with the rights or obligations of Park Developer under this Lease Agreement and the Park Development Agreement or (iii) for all other lawful purposes.

14. **Liens.** During the Project Term, County shall promptly pay or cause to be paid all sums of money that may become due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for, in upon or about the Park and which may be secured by any mechanic's, materialman's or other lien against the Park and/or the interest of Park Developer therein and for which Park Developer is not responsible, and shall cause each such lien to be fully discharged and released; provided, however, County or Park Developer may (i) contest any such

claim or lien without payment thereof so long as such non-payment and contest stays execution or enforcement of the lien, but if such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not stayed, or if stayed and the stay thereafter expires, then and in any such event County shall forthwith pay and discharge such judgment or lien; or (ii) delay payment without contest so long as and to the extent that such delay will not result in the imposition of any penalty.

15. **Quiet Enjoyment.**

15.1 **Lease.** Subject to Section 15.2, the parties hereto mutually covenant and agree that Park Developer, by keeping and performing the covenants and agreements herein contained, shall, at all times during the Phase Term for an applicable Phase, peaceably and quietly have, hold and enjoy the portion of the Park applicable to such Phase. Additionally, during the Phase Term for an applicable Phase, County and the public shall have no right to enjoyment, occupancy or use of the portion of the Park applicable to such Phase; provided, however, County and the public shall have rights of access to and from the following portions of the Park: (i) emergency exits leading from the Block One and Block Two garage stairways, (ii) emergency exits from Block One and Block Two Hall of Administration and Stanley Mosk Courthouse, (iii) the existing Starbucks building and any replacement Starbucks building, via an enclosed pedestrian walkway (this shall not be construed to provide access to Starbucks at all times; Park Developer and CEO shall work together in order to minimize the period of time between the closing of the existing Starbucks building and the opening of any replacement Starbucks building), (iv) the existing Block 4 ramp that services the Criminal Courts underground parking, (v) other County facilities for maintenance purposes, (vi) any other areas mutually agreed to by County and Park Developer.

15.2 **Lease-Back.** The parties hereto mutually covenant and agree that County, by keeping and performing the covenants and agreements herein contained, shall, at all times during the Lease-Back Term for an applicable Phase, peaceably and quietly have, hold and enjoy the Park, subject to Section 13.

16. **Incidental Rights.** In addition to rights granted to Park Developer under this Lease Agreement, County shall grant to Park Developer and its designees rights to access and perform work on County property, such as electrical and fountain pump rooms, as required in order to complete the Project Work, which rights shall be granted pursuant to agreements mutually acceptable in form and substance to County and Park Developer.

**PART D: GENERAL TERMS AND CONDITIONS**

17. **Hypothecation of Leasehold.** Park Developer shall not assign, transfer, hypothecate, mortgage, or grant control of its interest in this Lease Agreement or any portion thereof without County's prior written consent, subject to Section 53.

18. **Hazardous Substances.**

18.1 **Notification.** During the Project Term, County shall promptly notify Park Developer in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the Park requiring notice to be given to any governmental entity or authority under Hazardous Materials Laws; (b) any knowledge by County (after verification of the veracity of such knowledge to County's reasonable satisfaction) that the Park does not comply with any Hazardous Materials Laws; (c) the receipt by County of written notice of any Hazardous Materials claims; and (d) the discovery by County of any occurrence or condition on the Park or on any real property located within 2,000 feet of the Park Parcel that could cause the Park or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

18.2 **Covenant.** During the Project Term, County shall not use the Park or knowingly allow the Park to be used for the generation, manufacture, storage, disposal, or Release of Hazardous Materials in violation of Hazardous Materials Laws. County shall agree to use commercially reasonable efforts to ensure that no agent, employee, or contractor or subcontractor of County uses the Park or allows the Park to be used for the generation, manufacture, storage, disposal or Release of Hazardous Materials in violation of Hazardous Materials Laws. County's agreements and contracts with such third parties shall include covenants for compliance by such third parties with the aforementioned environmental covenants. County shall agree to comply and cause the Park to comply with Hazardous Materials Law. The storage and use, in customary amounts, of normal cleaning supplies and other items that are generally used in connection with the construction of improvements similar to the Park Improvements shall be permitted so long as such materials are used and stored in accordance with Hazardous Materials Laws.

19. **Indemnification by County.** County shall indemnify, defend and hold Park Developer, Related, GALA and all of their respective affiliates, officers, directors, partners, members, fiduciaries, shareholders, managers, agents, servants, attorneys and employees and their respective successors and assigns (collectively, the "**Developer Indemnified Parties**") harmless from and against any and all actions, allegations, claims, costs, damages, demands, expenses, liabilities, proceedings and suits (each, a "**Claim**" and collectively, "**Claims**"), and any and all costs, damages, expenses, fees, fines, liabilities, losses and penalties of any Developer Indemnified Party incurred in connection with any Claim (including without limitation reasonable attorneys' fees and expenses and costs of investigation, litigation, settlement and judgment) (collectively, "**Damages**"), which may arise out of or may be alleged to have occurred as a result of (i) Park Developer's performance of the Park Developer Work, (ii) Park Developer's possession and use of, and leasehold interest in, the Park pursuant to this Lease Agreement, (iii) any inaccuracy or breach of any County representation, warranty, agreement, or covenant contained in this Lease Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, Release, or disposal (whether or not County knew of same) of any Hazardous Materials, and (iv) the willful misconduct of, active negligence of, or material breach of this Lease Agreement by, any County Indemnified Party; provided, however, County shall not have any obligation to indemnify, defend or hold any Developer Indemnified Party harmless from and against any Claim or Damages directly relating to or arising out of the willful misconduct of, active negligence of, or material breach of this Lease

Agreement by, Park Developer. This provision shall survive the expiration or other termination of this Lease Agreement.

20. **Indemnification by Park Developer.** Park Developer shall indemnify, defend and hold harmless County, Authority, GAC, CRA, the Board of Supervisors, and their elected and appointed officials, and their officers, directors, trustees, principals, employees, agents, partners, predecessors and successors in interest, representatives, assigns, attorneys, administrators, insurers and each of them (collectively, the "**County Indemnified Parties**"), from and against any and all Claims, and any and all Damages, which may arise out of or may be alleged to have occurred as a result of the willful misconduct of, active negligence of, or material breach of this Lease Agreement by, Park Developer; provided, however, Park Developer shall not have any obligation to indemnify, defend or hold any of the County Indemnified Parties harmless from and against any Claim or Damages directly relating to or arising out of the willful misconduct of, active negligence of, or material breach of this Lease Agreement by, any of the County Indemnified Parties. This provision shall survive the expiration or other termination of this Lease Agreement.

21. **Directors, Etc. Not Liable.** None of the directors, officers, shareholders, partners, members, consultants or representatives of Park Developer shall be personally liable for the obligations of Park Developer hereunder.

22. **Amendments.** This Lease Agreement may not be amended except by a writing signed by each of the parties hereto.

23. **Notices.** All notices under this Lease Agreement by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered by hand directly to the offices named below or sent by United States registered mail in Los Angeles County, return receipt requested, postage prepaid, or by email or FAX and addressed as follows:

23.1 **If to County:**

Chief Executive Office  
Financial and Asset Management  
713 Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012  
Attention: Jan Takata  
Email: jtakata@ceo.lacounty.gov

23.2 **If to Park Developer:**

Grand Avenue Park Development, LLC  
c/o The Related Companies, L.P.  
333 South Grand Avenue, Suite 4050  
Los Angeles, California  
Attention: Barry Widen  
Email: barry.widen@related.com

With a copy to:

Grand Avenue Park Development, LLC  
c/o The Related Companies, L.P.  
333 South Grand Avenue, Suite 4050  
Los Angeles, California  
Attention: Stephen Eimer  
Email: seimer@related.com

or to such other address or addresses as either party hereto may designate to the other by notice given in accordance with the provisions in this Section. Any notice given under this Lease Agreement shall also be given by the party giving such notice to the issuer of any insurance policy purchased by County insuring the payment of principal and interest with respect to evidence of indebtedness issued by County.

24. **Validity.** If any one or more of the terms, provisions, promises, covenants or conditions of this Lease Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, then each and all of the remaining terms, provisions, promises, covenants and conditions of this Lease Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

25. **Lease Execution.** This Lease Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which together shall constitute one and the same Lease Agreement.

26. **Law Governing.** This Lease Agreement is made in the State of California under the Constitution and laws of the State and is to be so construed.

27. **Estoppel Certificate.** Either party shall at any time upon not less than thirty (30) days' prior written notice from the other party execute, acknowledge and deliver to the requesting party a statement in writing (a) certifying that this Lease Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease Agreement, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (b) acknowledge that there are not to the declarant's knowledge, any uncured defaults on the part of either party hereunder, or specifying such defaults if any are claimed, or acts which with the passage of time and no cure would become defaults. Any

such statement may be conclusively relied upon by a prospective purchaser or encumbrancer of the Park Improvements or any other interested party. Failure to deliver such statement within such time shall be conclusive evidence (a) that this Lease Agreement is in full force and effect without modification except as may be represented by the requesting party in the written request for the certificate, (b) that there are no uncured defaults in either party's performance, and (c) that no more than one month's rent has been paid in advance.

28. **Eminent Domain.** If the Park, or so much thereof as to render the remainder of the Park unusable for County's purposes under this Lease Agreement shall be taken under the power of eminent domain, then this Lease Agreement shall terminate as of the day possession shall be so taken, or, if County is the condemnor, then this Lease Agreement shall terminate as of the date of entry of the interlocutory judgment. If less than all of the Park shall be taken under the power of eminent domain, and the remainder of the Park is usable for County purposes, then this Lease Agreement shall continue in full force and effect as to such portion and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary. Any award made in eminent domain proceedings for the taking of any portion of the Park shall be paid to County and Park Developer as their interests may appear.

29. **Assignment and Sublease.** No interest of County herein shall be mortgaged, pledged, assigned or transferred by County by voluntary act or by operation of law, or otherwise without the prior written consent of Park Developer, which consent shall not be unreasonably withheld; provided, however, that County may sublease all or any portion of the Park, and may grant concessions to others involving the use of any portion of the Park, whether such concessions purport to convey a leasehold interest or a license to use a portion of the Park. The County shall at all times remain liable for the performance of the covenants and conditions on its part to be performed under this Lease Agreement, notwithstanding any subletting or granting of concessions which may be made. Nothing herein contained shall be construed to relieve County from its obligation to pay Base Rental and Additional Rental as provided in this Lease Agreement or relieve County from any other obligations contained herein.

30. **Default and Remedies.**

30.1 **Defaults.** The occurrence of any of the following shall constitute a material default and breach of this Lease Agreement:

30.1.1 A failure by Park Developer or County, as the case may be, to perform its material obligations as set forth in the Park Development Agreement when such failure continues for thirty (30) days after prior written notice thereof to Park Developer or County, as the case may be; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, Park Developer or County, as the case may be, shall not be deemed to be in default if Park Developer or County, as the case may be, shall within such period commence such cure and thereafter diligently prosecute the same to completion. In addition to the remedies available to County hereunder, a material default and breach of this Section 30.1.1 by Park

Developer beyond the foregoing notice and cure periods shall also constitute a default under the DDA, and Authority shall have the right to pursue remedies against GALA available thereunder.

30.1.2 A failure by Park Developer or County, as the case may be, to observe and perform any provisions of this Lease Agreement when such failure continues for thirty (30) days after prior written notice thereof to Park Developer or County, as the case may be; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, Park Developer or County, as the case may be, shall not be deemed to be in default if Park Developer or County, as the case may be, shall within such period commence such cure and thereafter diligently prosecute the same to completion.

30.1.3 The making by Park Developer or County, as the case may be, of any general assignment for the benefit of Park Developer's or County's creditors, as the case may be; or the filing of a petition to have Park Developer or County, as the case may be, adjudicated a bankrupt, or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Park Developer or County, as the case may be, the same is dismissed within sixty (60) days; or the appointment of a trustee or receiver to take possession of substantially all of Park Developer's or County's assets located at the Park or Park Developer's or County's interest in this Lease Agreement, when possession is not restored to Park Developer or County, as the case may be, the within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Park Developer's or County's interest in this Lease Agreement, when such seizure is not discharged within sixty (60) days.

30.2 Remedies. If Park Developer or County, as the case may be, defaults under this Lease Agreement, Park Developer or County, as the case may be, shall, in addition to any other remedies available by law or equity, have one or more of the following remedies at Park Developer's or County's, as the case may be, election:

30.2.1 In addition to the other rights and remedies of County under this Lease Agreement or applicable law, in the event of a material breach by Park Developer or any successor or assignee of Park Developer of Section 17, County may elect to purchase the Park Improvements on any date, at a price equal to any earned but unpaid portions of Park Developer's Reimbursable Expenses, and the principal portion of the unpaid rent under this Lease Agreement, subject to Section 10.3. In the event County exercises its right to purchase the Park Improvements under this Section 30.2.1, County shall not be precluded from exercising or pursuing any other right or remedy it may have under this Lease Agreement or applicable law.

30.2.2 Without barring later election of any other remedy and without terminating Park Developer's or County's, as the case may be, right to possession of the Park, or any part thereof, Park Developer or County, as the case may be, may require strict performance of all covenants and obligations herein as the same shall accrue or become due, without terminating this Lease Agreement and have the right of action therefor without awaiting the end of the Phase Term or Lease-Back Term, as the case may be.

30.2.3 If County obtains a judgment of possession of the Park Improvements pursuant to the Forcible Entry and Detainer provisions of Sections 1159 et seq of the Code of Civil Procedure (unless Park Developer obtains relief under Section 1179 of that Code) or if County, by giving thirty (30) days prior written notice, declares this Lease Agreement to be terminated because of a breach of this Lease Agreement, then County may enter upon the Park and remove any and all persons and or property whatsoever situated thereon, and place all or any portion of said property in storage at the expense of Park Developer and dispose of such property in accordance with applicable laws. County shall be entitled to recover the following in one or more awards or judgment from Park Developer: Any amount to compensate County for all the detriment proximately caused by Park Developer's failure to perform Park Developer's obligations under this Lease Agreement or which in the ordinary course of things would be likely to result therefrom. Such other amount shall include, but not be limited to (i) such reasonable, out-of-pocket expenses (including reasonable attorney's fees) as County may have paid, assumed, or incurred in recovering possession of County's land, (ii) placing County's land in good order and condition, (iii) preparing or altering County's land for reletting, and (iv) reletting County's land during any part of time for which a rental concession, if any, had been given by County.

30.2.4 The Park Developer or County, as the case may be, may deduct the cost of curing the other party's default from any amounts owing.

30.2.5 The remedies provided for in this Paragraph are in addition to and not a limitation on the remedy provided Park Developer or County, as the case may be, in Section 30.1.1, relative to the material failure of Park Developer or County, as the case may be, to perform its obligations under the Park Development Agreement.

30.2.6 If any such default by Park Developer occurs prior to the Acceptance Date for any Phase, following all applicable notice and grace periods, during the pendency of such default County may require the Park Developer to assign the Construction Contract for such Phase to County or its designee.

30.3 Equitable Relief. Nothing contained herein shall affect, change, or constitute a waiver of any rights of County or Park Developer to obtain equitable relief when such relief is otherwise appropriate, or to obtain the relief provided by Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, relating to actions for unlawful detainer, forcible entry, and forcible detainer.

30.4 Cumulative Remedies. The remedies of Park Developer and County as provided above are cumulative and in addition to, rather than exclusive of, any other remedy of Park Developer and County herein given or that may be permitted by law. Any lawful reentry as provided for herein shall not make Park Developer or County liable in damages or guilty of trespass because of any such lawful reentry.

31. **Anti-Discrimination.** The following provisions are required by Section 4.32.010 et seq. of the Los Angeles County Code:

- Park Developer certifies and agrees that all persons employed by Park Developer, its affiliates, subsidiaries, or holding companies are, and will be, treated equally by Park Developer without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with state and Federal anti-discrimination laws. Park Developer further certifies and agrees that it will deal with its subconsultants, bidders, and vendors without regard to or because of race, religion, ancestry, national, origin, or sex. Park Developer agrees to allow access to its employment records during regular business hours to verify compliance with the foregoing Provisions when so requested by County.
- Park Developer specifically recognizes and agrees that if County finds that any of the foregoing provisions have been violated, the same shall constitute a material breach of the Lease upon which County may determine to cancel, terminate, or suspend the Lease. While County reserves the right to determine individually that the anti-discrimination provision of the Lease has been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Park Developer has violated state or Federal anti-discrimination laws shall constitute a finding by County that Park Developer has violated the anti-discrimination provisions of the Lease.
- At its option, and in lieu of canceling, terminating, or suspending the Lease, County may impose damages for any violation of the anti-discrimination provisions of this paragraph, in the amount of Two Hundred Dollars (\$200) for each violation found and determined. County and Park Developer specifically agree that the aforesaid amount shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained by reason of any such violation, because from the circumstances and the nature of the violation, it is impracticable and extremely difficult to fix actual damages.

32. **Independent Contractor Status.** This Lease Agreement is by and between County and Park Developer and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Park Developer. Park Developer understands and agrees that all persons furnishing services to County pursuant to this Lease Agreement are, for purposes of Workers' Compensation liability, employees solely of Park Developer and not of County. Park Developer shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries arising from, or connected with, services performed on behalf of Park Developer pursuant to this Lease Agreement.

33. **County's Quality Assurance Plan.** County, or its agent, will evaluate Park Developer's performance under this Lease Agreement on not less than an annual basis. Such evaluation will include assessing Park Developer's compliance with all Lease Agreement terms and performance

standards. Park Developer deficiencies which County determines are severe or continuing, and that may place performance of this Lease Agreement in jeopardy if not corrected, will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by County and Park Developer. If improvement does not occur consistent with the corrective action measures, County may terminate this Lease Agreement or impose other penalties as specified in this Lease Agreement.

34. **Conflict of Interest.** No County employee in a position to influence the award of this Lease Agreement or any competing agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by Park Developer herein, or have any other direct or indirect financial interest in this Lease Agreement.

35. **Prohibition From Involvement in Bidding Process.** Park Developer understands and agrees that neither it nor its subsidiaries shall be involved in any way in the bidding process on any Request for Proposal developed or prepared by or with the assistance of Park Developer's services rendered pursuant to this Lease Agreement, either as a prime Contractor or subcontractor, or as a Park Developer to any other prime Contractor or subcontractor. Any such involvement by Park Developer shall result in the rejection by County of the bid by the prime contractor in question.

36. **Lobbying.** Park Developer and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Park Developer, shall fully comply with County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Park Developer or any County lobbyist or County lobbying firm retained by Park Developer to fully comply with County Lobbyist Ordinance shall constitute a material breach of this Lease Agreement, upon which County may immediately terminate or suspend this Lease Agreement.

37. **Gratuities.** It is improper for any County officer, employee, or agent to solicit consideration, in any form, from Park Developer with the implication, suggestion, or statement that Park Developer's provision of the consideration may secure more favorable treatment for Park Developer in the award of the Lease or that Park Developer's failure to provide such consideration may negatively affect County's consideration of Park Developer's submittal. Park Developer shall not offer or give, either directly or through an intermediary, consideration, in any form, to a County officer, employee, or agent for the purpose of securing favorable treatment with respect to the award of the Lease. Park Developer shall immediately report any attempt by a County officer, employee, or agent to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee, or to County Auditor-Controller's Employee Fraud Hotline, at (213) 974-0914 or (800) 544-6861. Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

38. **Employment of Laid-Off County Employees.** Should Park Developer, or any subconsultant performing more than \$250,000 of this Lease Agreement value, require additional or replacement personnel to perform services under this Lease Agreement other than the performance of

a skilled trade, Park Developer shall give first consideration for such employment openings to qualified County employees who are targeted for layoff or qualified former County employees who are on a re-employment list.

39. **Park Developer's Warranty of Adherence to County's Child Support Compliance Program.** Park Developer acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through contract are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers. As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Park Developer's duty under this Lease Agreement to comply with all applicable provisions of law, Park Developer warrants that it is now in compliance and shall during the term of this Lease Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or DISTRICT Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b). Failure of Park Developer to maintain compliance with these requirements shall constitute a default by Park Developer under this Lease Agreement. Without limiting the rights and remedies available to County under any other provision of this Lease Agreement, failure to cure such default within 90 days of notice by the Los Angeles County Child Support Services Department shall be grounds upon which County Board of Supervisors may terminate this Lease Agreement.

40. **Park Developer's Acknowledgment of County's Commitment to Child Support Enforcement.** Park Developer acknowledges that County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Park Developer understands that it is County's policy to encourage all County Park Developers to voluntarily post County's L.A.'s Most Wanted: Delinquent Parents poster in a prominent position at Park Developer's place of business. The County of Los Angeles Child Support Services Department will supply Park Developer with the poster to be used.

41. **Termination For Improper Consideration.** County may, by written notice to Park Developer, immediately terminate the right of Park Developer to proceed under this Lease Agreement if it is found that consideration, in any form, was offered or given by Park Developer, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing the Lease or securing favorable treatment with respect to the award, amendment, or extension of the Lease or the making of any determinations with respect to Park Developer's performance pursuant to the Lease. In the event of such termination, County shall be entitled to pursue the same remedies against Park Developer as it could pursue in the event of default by Park Developer. Park Developer shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee or to County Auditor-Controller's Employee Fraud Hotline at

(213) 974-0914 or (800) 544-6861. Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

42. **Consideration of GAIN/GROW Program Participants for Employment.** Should Park Developer require additional or replacement personnel after the effective date of this Lease Agreement, Park Developer shall give consideration for any such employment openings to participants in County's Department of Public Social Services' Greater Avenues for Independence (GAIN) or General Relief Opportunity for Work (GROW) Program who meet Park Developer's minimum qualifications for the open position. County will refer GAIN/GROW participants by job category to Park Developer.

43. **Notice to Employees Regarding the Federal Earned Income Credit.** Park Developer shall notify its employees that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirement set forth in Internal Revenue Service Notice 1015.

44. **Reduction of Solid Waste.** Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at County landfills, Park Developer agrees to use recycled-content paper to the maximum extent possible on the project.

45. **County Rights.** The County and Park Developer may employ, either during or after performance of this Lease Agreement, any right of recovery such party may have against the other party by any means it deems appropriate including, but not limited to, set-off, action at law or in equity, withholding, recoupment, or counterclaim. The rights and remedies of County and Park Developer under this Lease Agreement are in addition to any right or remedy provided by California law.

46. **Fair Labor Standards Act.** Park Developer shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless County, its agents, officers and employees from any and all liability including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising as a result of Park Developer's failure to comply with any wage and hour law as they may apply to Park Developer's employees, including, but not limited to, the Federal Fair Labor Standards Act for services performed by Park Developer's employees for which County may be found jointly or solely liable.

47. **Prevailing Wage Requirements.** Park Developer shall comply with all applicable prevailing wage requirements including as set forth in greater detail in the Park Development Agreement. The subject project is a public work as defined in Section 1720 of the California Labor Code.

48. **Employment Eligibility Verification.** Park Developer warrants that it fully complies with all Federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained

in Federal statutes and regulations. Park Developer shall obtain, from all covered employees performing services hereunder, all verifications and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Park Developer shall retain such documentation for all covered employees for the period prescribed by law. Park Developer shall indemnify, defend, and hold harmless County, its officers and employees from employer sanctions and any other liability which may be assessed against County in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Lease Agreement.

49. **Contractor Responsibility and Debarment.** A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is County's policy to conduct business only with responsible contractors. Park Developer is hereby notified that, in accordance with Chapter 2.202 of County Code, if County acquires information concerning the performance of Park Developer on this or other contracts which indicates that Park Developer is not responsible, County may, in addition to other remedies provided in the Lease, debar Park Developer from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts Park Developer may have with County. The County may debar a contractor if the Board of Supervisors finds, in its discretion, that Park Developer has done any of the following: (1) violated a term of a contract with County or a nonprofit corporation created by County; (2) committed an act or omission which negatively reflects on Park Developer's quality, fitness or capacity to perform a contract with County, any other public entity, or a nonprofit corporation created by County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against County or any other public entity. If there is evidence that Park Developer may be subject to debarment, the Department will notify Park Developer in writing of the evidence which is the basis for the proposed debarment and will advise Park Developer of the scheduled date for a debarment hearing before the Contractor Hearing Board. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Park Developer and/or Park Developer's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether Park Developer should be debarred, and, if so, the appropriate length of time of the debarment. Park Developer and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board. If Park Developer has been debarred for a period longer than five years, that Park Developer may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. County may, in its discretion, reduce the period of

debarment or terminate the debarment if it finds that Park Developer has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of County. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) Park Developer has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board. These terms shall also apply to subconsultants of County Park Developers.

50. **Compliance with Jury Service Program.** This Lease Agreement is subject to provisions of County's ordinance entitled Contractor Employee Jury Service (Jury Service Program) as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code. Unless Contractor has demonstrated to County's satisfaction either that Contractor is not a Contractor as defined under the Jury Service Program (Section 2.203.020 of County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of County Code), Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service. For purposes of this Section, Contractor means a person, partnership, corporation or other entity which has a contract with County or a subcontract with a County contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. Employee means any California resident who is a full-time employee of Contractor. Full-time means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for County under the Lease, the subcontractor shall also be subject to the provisions of this Section. The provisions of this Section shall be inserted into any such subcontract AGREEMENT and a copy of the Jury Service Program shall be attached to the Lease. If Contractor is not required to comply with the Jury Service Program when the Lease commences, Contractor shall have a

continuing obligation to review the applicability of its exception status from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program's definition of Contractor or if Contractor no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Lease and at its sole discretion, that Contractor demonstrate to County's satisfaction that Contractor either continues to remain outside the Jury Service Program's definition of Contractor and/or that Contractor continues to qualify for an exception to the Program. Contractor's violation of this Section of the Lease may constitute a material breach of the Lease. In the event of such material breach, County may, in its sole discretion, terminate the Contractor and/or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

51. **No Payment for Services Provided Following Expiration/Termination of Lease.** Park Developer shall have no claim against County for payment for any money or reimbursement, of any kind whatsoever, for any service provided by Park Developer after the expiration or other termination of this Lease Agreement. Should Park Developer receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Lease Agreement shall not constitute a waiver of County's right to recover such payment from Park Developer. This provision shall survive the expiration or other termination of this Lease Agreement.

52. **Notice to Employees Regarding the Safely Surrendered Baby Law.** The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and how to safely surrender a baby. The fact sheet is available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes. The Contractor acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is County's policy to encourage all County Contractors to voluntarily post County's Safely Surrendered Baby Law poster in a prominent position at the Contractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used.

53. **Assignment by Park Developer.**

53.1 **Assignment.** Park Developer shall not assign its rights or delegate its duties under the Lease, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, County consent shall require a written amendment to the Lease, which is formally approved and executed by the parties. Any payments by County to any approved delegate or assignee on any claim under the Lease shall be deductible, at County's sole discretion, against the claims which Park Developer may have against County.

53.2 **Change of Control.** Shareholders, partners, members, or other equity holders of Park

Developer may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Park Developer to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Lease, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Lease Agreement.

53.3 **Delegation.** Except as provided in the Park Development Agreement, any assumption, assignment, delegation, or takeover of any of Park Developer's duties, responsibilities, obligations, or performance of same by any entity other than Park Developer, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Lease which may result in the termination of the Lease. In the event of such termination, County shall be entitled to pursue the same remedies against Park Developer as it could pursue in the event of default by Park Developer.

54. **Waiver.** The waiver by Park Developer or County of any term, covenants or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained.

55. **Marginal Headings.** The Section titles in this Lease Agreement are not part of this Lease Agreement and shall have no effect upon the construction or interpretation of any part hereof.

56. **Time.** Time is of the essence of this Lease Agreement and of each and all of its provisions in which performance is a factor.

57. **Prior Agreements.** This Lease Agreement, including all of the documents and attachments incorporated by reference herein, contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease Agreement and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. This Lease Agreement, and any amendments thereto, shall not be effective or binding on any party until fully executed by all parties hereto.

58. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall wherever possible be cumulative with all other remedies at law or in equity.

59. **Warranties or Guarantees.** In the event that any of the items built or installed in the Park Improvements herein are protected by warranties or guarantees County shall be entitled to the full benefit of such protection as if it were the original purchaser thereof.

60. **Approvals.** Whenever this Lease Agreement requires or permits an act, decision, approval, request, consent or the like of either party, such act, decision, approval, request, consent or the like shall not be unreasonably withheld conditioned or delayed, except where stated to be in County's or Park Developer's discretion or sole discretion.

61. **Venue.** Park Developer hereby agrees to submit to the jurisdiction of the courts of the State of California. The exclusive venue of any action brought by Park Developer on its behalf which arises from this Lease Agreement shall be deemed to be in the courts of the State of California located in Los Angeles County, California.

62. **Warranty of Authority.** Park Developer hereby represents and warrants to County that this Lease Agreement is duly authorized, executed and delivered by, and is binding upon, Park Developer.

63. **Disputes.** Any and all claims, disputes, or other matters in controversy arising out of or related to this Lease Agreement (a "**Dispute**") are subject to a non-binding dispute resolution process in accordance with this **Section 63.**

63.1 **Mediation.** The parties shall endeavor to resolve their Disputes by non-binding mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Lease Agreement. A request for mediation shall be made in writing, delivered to the other party to this Lease Agreement, and filed with the person or entity administering the mediation. The parties shall share the mediator's fee and any filing fees equally.

63.2 **Pendency of Dispute.** Without limiting any other right or obligation of County or Park Developer hereunder or under the Park Development Agreement, County and Park Developer shall continue to perform their obligations hereunder during the pendency of a Dispute.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County and Park Developer have caused this Lease Agreement to be executed as of the day and year first above written.

**"COUNTY"**

THE COUNTY OF LOS ANGELES,  
a subdivision of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

Robert Kalunian  
Acting County Counsel

By: \_\_\_\_\_  
Deputy

**"PARK DEVELOPER"**

GRAND AVENUE PARK DEVELOPMENT,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Bill Witte, Vice President

By: \_\_\_\_\_  
Stephen F. Eimer, Vice President

The undersigned hereby executes this Lease Agreement to consent to the provisions of Section 30.1.1, and to acknowledge that a breach of this Lease Agreement by Park Developer may result in termination of the DDA at the election of Authority:

GRAND AVENUE L.A., LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A-1**

**DESCRIPTION AND DEPICTION OF BLOCKS 1, 2 & 4**

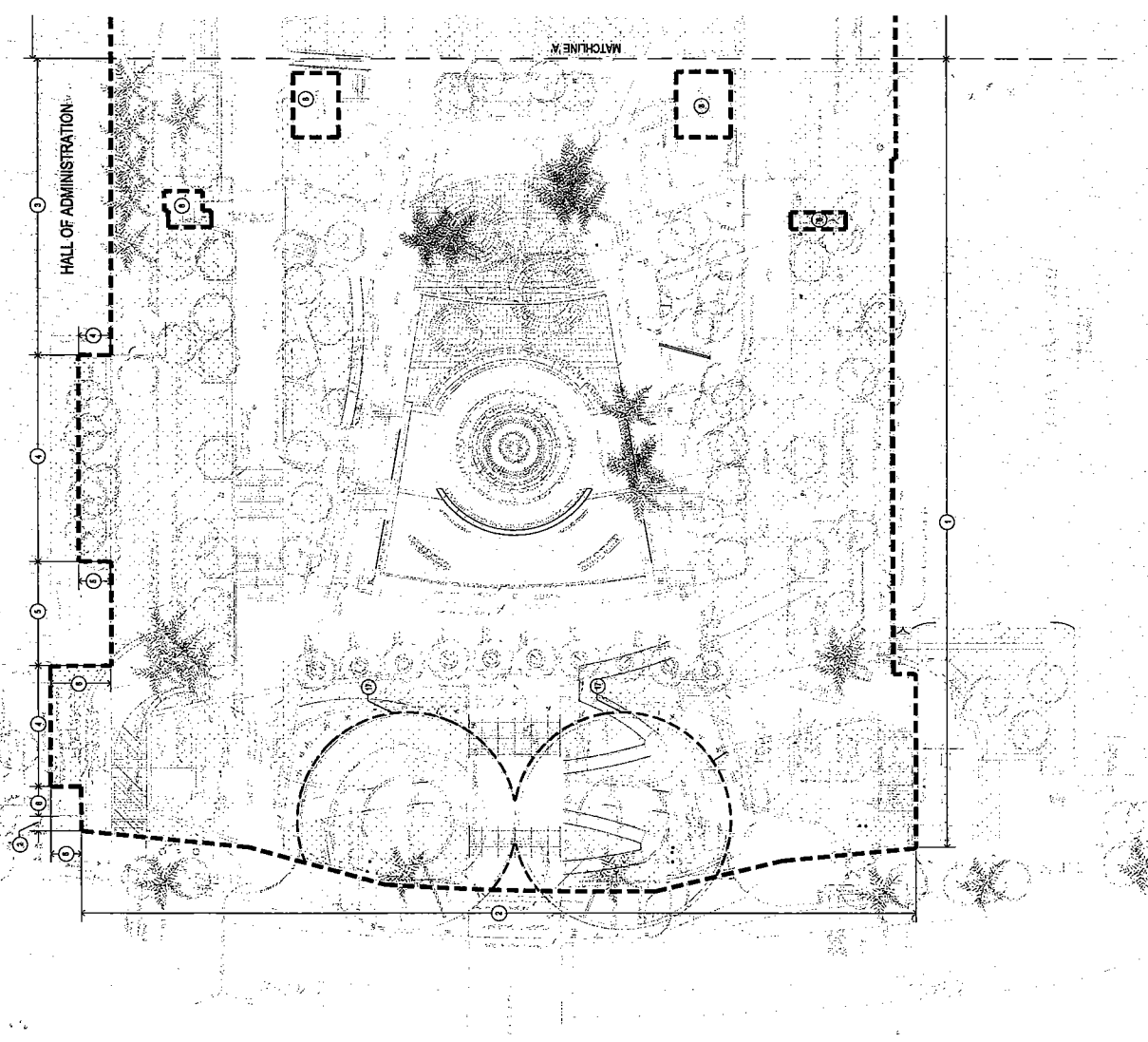
[to be attached]

- LEGEND
- ① EXISTING PROPERTY LINE
  - ② 30' EAST OF EXISTING FACE OF CURB
  - ③ FACE OF EXISTING BUILDING
  - ④ FACE OF EXISTING WALL
  - ⑤ EDGE OF EXISTING PAVING
  - ⑥ FACE OF EXISTING PLACQUÉ PLATFORM
  - ⑦ ALIGN WITH EXISTING PLACQUÉ PLATFORM
  - ⑧ EXISTING ELEVATION, ESCALATION AND STAIRWAYS ARE ENCLOSED
  - ⑨ BACK OF EXISTING SIDEWALK
  - ⑩ OUTSIDE FACE OF EXISTING WALL
  - ⑪ ALIGN WITH FACE OF EXISTING WALL
  - ⑫ FACE OF EXISTING BASEMENT WALL
  - ⑬ TOP OF EXISTING BASEMENT SLOPE
  - ⑭ OUTSIDE FACE OF EXISTING ROOF
  - ⑮ ALIGN WITH EXISTING ADJACENT PAVING
  - ⑯ EAST EDGE OF EXISTING STAIRS
  - ⑰ EXISTING WALL OF EXISTING DAMP

--- AREA WITHIN THIS BOUNDARY INCLUDES (B) PARK SURFACE ONLY

--- AREA WITHIN THIS BOUNDARY EXCLUDES FROM (B) PARK SURFACE TO ELEVATION 100.0

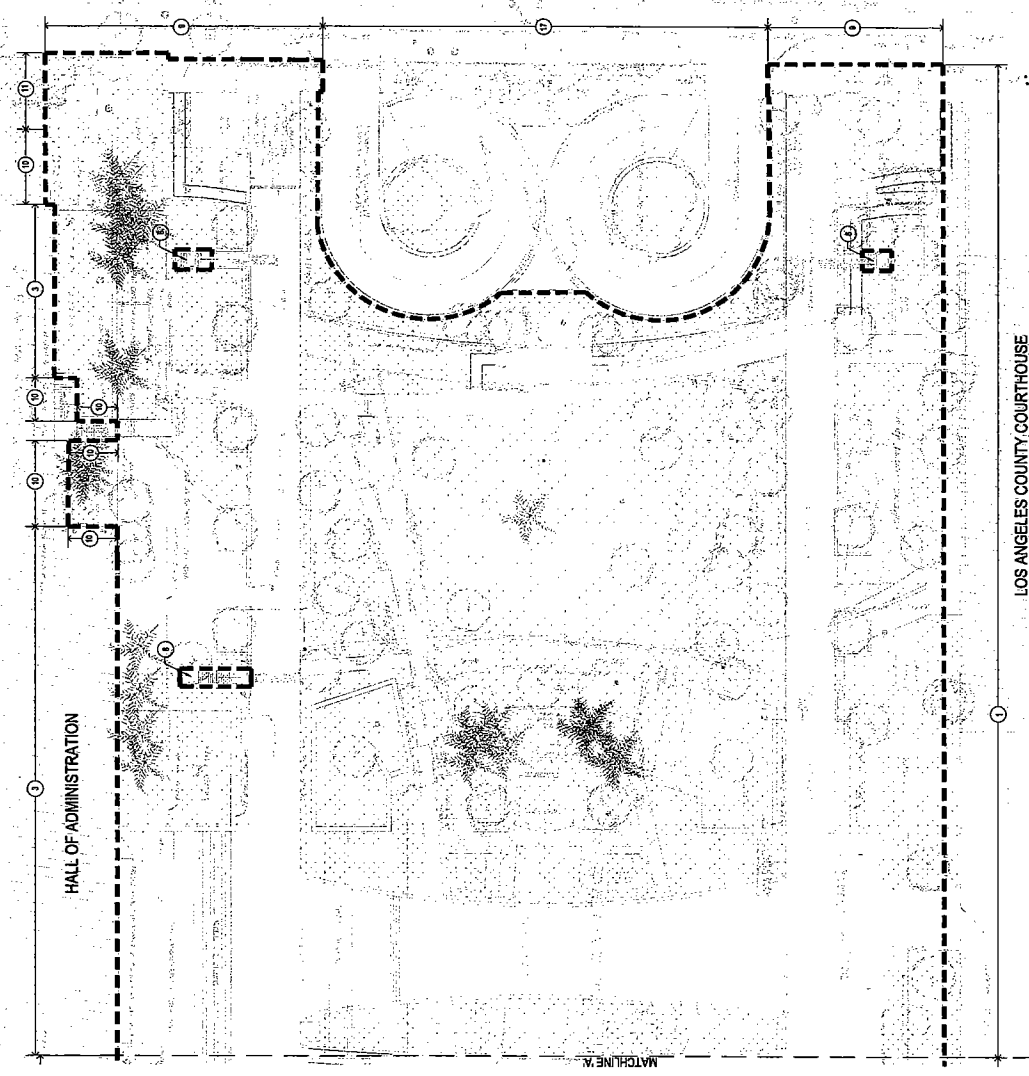
SCALE: 1" = 30'



- LEGEND
- 1 EXISTING PROPERTY LINE
  - 2 WEST FACE OF EXISTING FACE OF CURB
  - 3 EAST FACE OF EXISTING BUILDING
  - 4 FACE OF EXISTING BUILDING
  - 5 EAST FACE OF EXISTING WALL
  - 6 EAST FACE OF EXISTING WALL
  - 7 EAST FACE OF EXISTING WALL
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  - 97 EAST FACE OF EXISTING WALL
  - 98 EAST FACE OF EXISTING WALL
  - 99 EAST FACE OF EXISTING WALL
  - 100 EAST FACE OF EXISTING WALL

AREA WITHIN THIS BOUNDARY INCLUDES EXISTING PAVING SURFACE ONLY

AREA WITHIN THIS BOUNDARY EXTENDS FROM EXISTING PAVING SURFACE TO ELEVATION 200



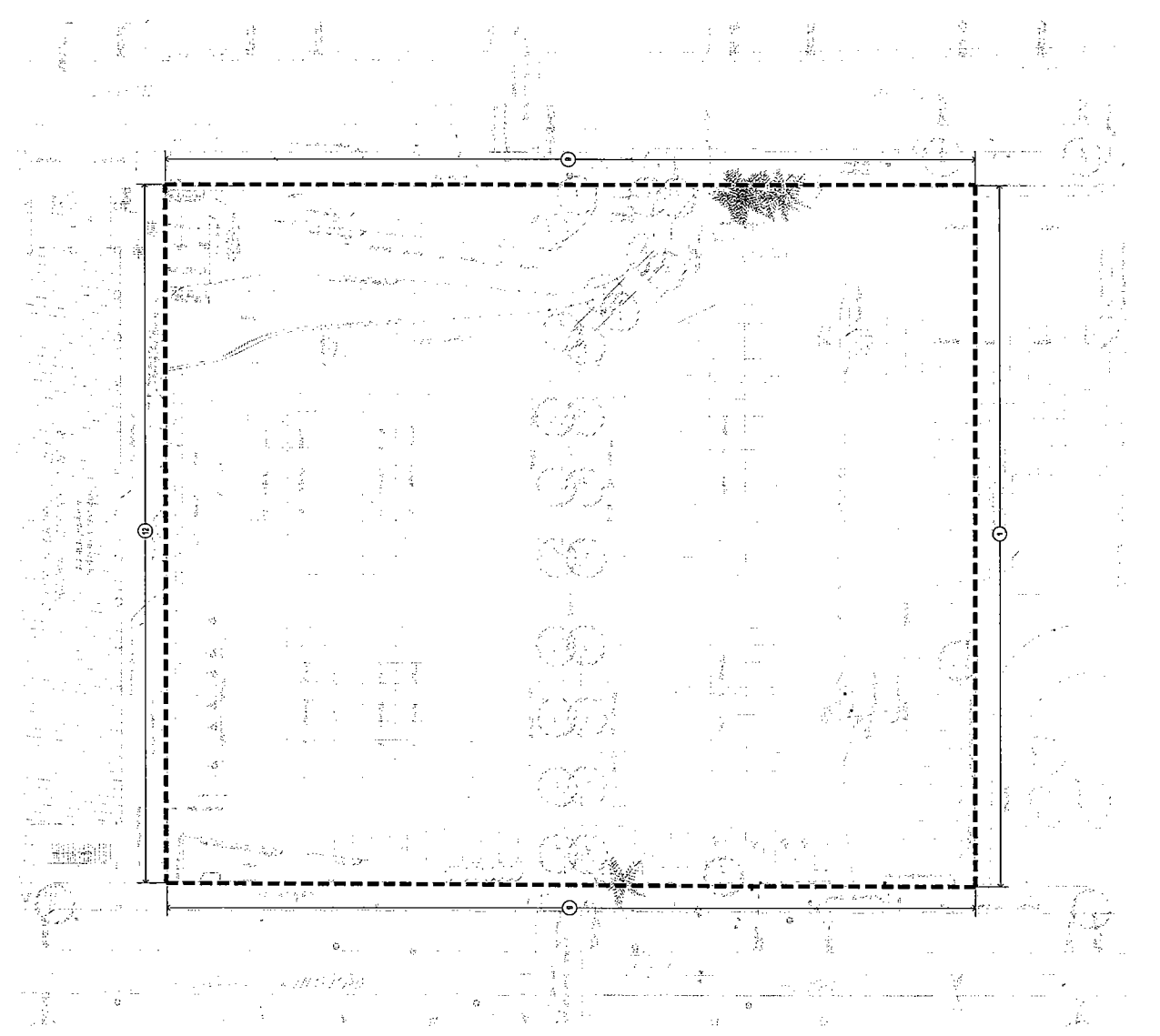
LOS ANGELES COUNTY COURTHOUSE

**LEGEND**

- ① EXISTING PROPERTY LINE
- ② 2' EAST OF EXISTING FACE OF CURB
- ③ FACE OF EXISTING BUILDING
- ④ FACE OF EXISTING WALL
- ⑤ EDGE OF EXISTING PAVING
- ⑥ FACE OF EXISTING PAVING
- ⑦ ALUM WITH EXISTING FLANKABLE PLATFORM
- ⑧ EXISTING BLANKET, LOCAL FORM AND STAIRWAYS ARE EXCLUDED
- ⑨ BACK OF EXISTING SIDEWALK
- ⑩ EXISTING FACE OF EXISTING WALL
- ⑪ ALUM WITH FACE OF EXISTING WALL
- ⑫ FACE OF EXISTING BASEMENT WALL
- ⑬ TOP OF EXISTING PAVED SLOPE
- ⑭ OUTSIDE FACE OF EXISTING SLOPE
- ⑮ ALUM WITH EXISTING ADJACENT PAVING
- ⑯ EAST EDGE OF EXISTING STAIR
- ⑰ EXISTING WALL OF EXISTING RAMP

--- AREA WITHIN THE BOUNDARY INCLUDES (E) PANE BRIDGE ONLY

--- AREA WITHIN THE BOUNDARY EXCLUDES FROM (E) PANE BRIDGE TO ELEVATION 215



**EXHIBIT A-2**

**DESCRIPTION AND DEPICTION OF BLOCK 3**

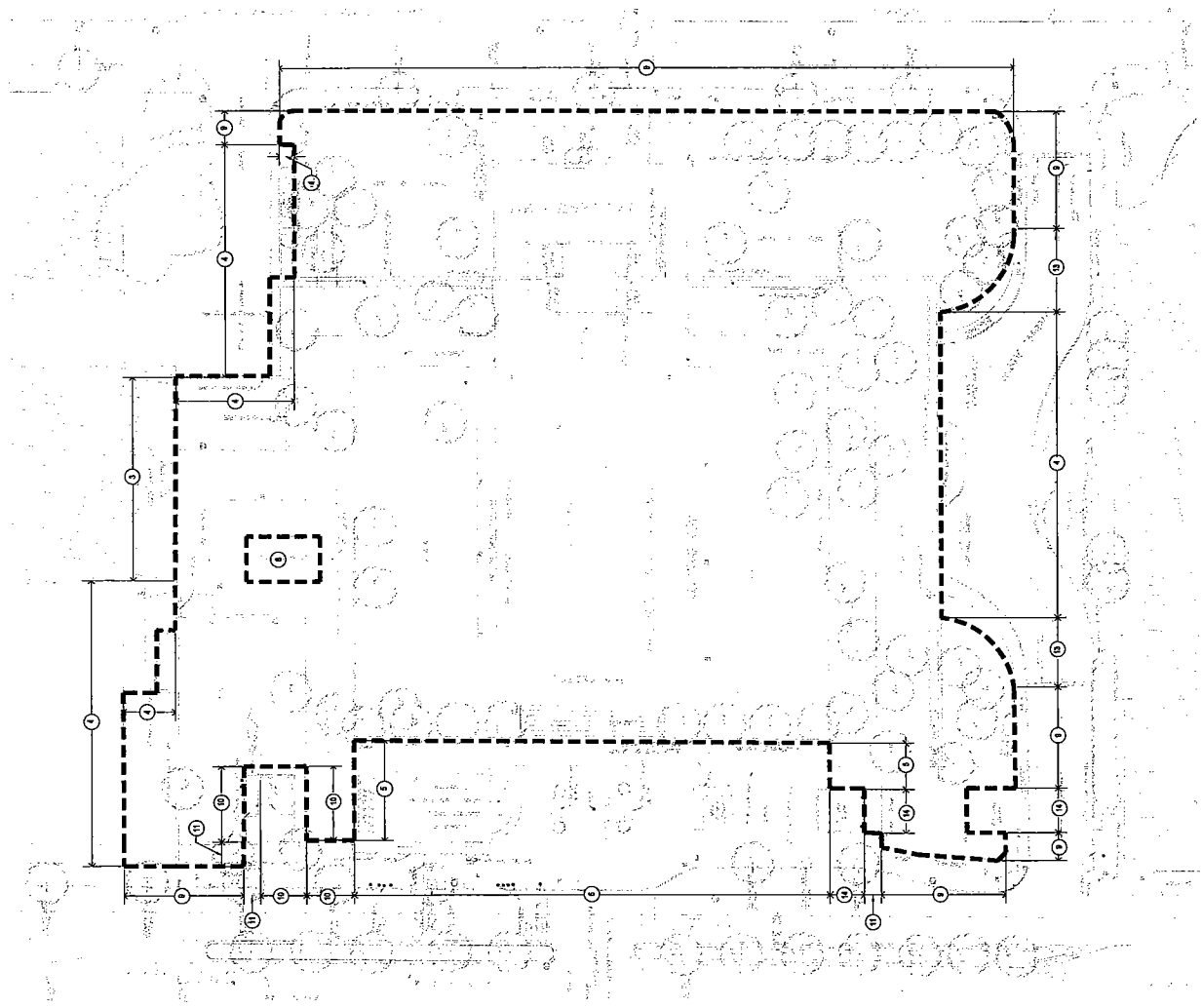
[to be attached]

- LEGEND**
- (1) EXISTING PROPERTY LINE
  - (2) 30' EAST OF EXISTING FACE OF CURB
  - (3) FACE OF EXISTING BUILDING
  - (4) FACE OF EXISTING WALL
  - (5) TOP OF EXISTING PAVING
  - (6) FACE OF EXISTING FLAGPOLE PLATFORM
  - (7) ALUM WITH EXISTING FLAGPOLE PLATFORM
  - (8) EXISTING ELEVATORS, ESCALATORS AND STAIRWAYS ARE EXCLUDED
  - (9) BACK OF EXISTING SIDEWALK
  - (10) OUTSIDE FACE OF EXISTING WALL
  - (11) ALUM WITH FACE OF EXISTING WALL
  - (12) FACE OF EXISTING MANSION WALL
  - (13) TOP OF EXISTING PAVED SLOPE
  - (14) OUTSIDE FACE OF EXISTING ROOF
  - (15) ALUM WITH EXISTING ALUMINUM PAVING
  - (16) EAST SIDE OF EXISTING STAIRS
  - (17) EXISTING WALL OF EXISTING RAMP

--- AREA WITHIN THE BOUNDARY INCLUDES BY PAVE SURFACE ONLY

--- AREA WITHIN THE BOUNDARY EXCLUDES FROM BY PAVE SURFACE TO ELEVATION 250

SCALE 1"=20'



## **EXHIBIT B**

### **PARK IMPROVEMENTS**

Park Improvements are defined by the following:

<b>1</b>	<b><u>Design Development Drawings</u></b>	<b><u>Date</u></b>
	Drawings indicating alternates are only included if listed in Item 5 below:	
	Cover Sheet	07/10/09
	T0.00, T1.00, T3.00, T3.01, T3.10, T3.11, T4.00, T4.01, T4.10, T4.11	
	Civil	07/10/09
	C0.00, C1.10 - C1.40, C2.10 - C2.40, C4.10 - C4.12, C4.20, C4.30, C4.40, C5.10 - C5.40, C6.11, C6.22, C6.41, C7.10, C7.40, C8.10 - C8.40, C9.00, C9.01, C4.20A - C4.40A, C5.30A, C5.40A, C7.40A	
	Landscaping	07/10/09
	L0.00, L0.01, L1.10 - L1.40, L2.10 - L2.40, L3.10 - L3.12, L3.20, L3.30, L3.31, L3.40, L4.10 - L4.17, L4.20, L4.21, L4.30 - L4.33, L4.41 - L4.43, L5.10 - L5.13, L5.20, L5.21, L6.10 - L6.40, L7.10 - L7.30, L8.01, L8.02, L8.10 - L8.40, L0.00A, L1.30A, L2.10A - L2.40A, L3.20A, L8.03A, L8.20A, L8.30A, L8.40A	
	Architectural	07/10/09
	A1.10, A2.10 - A2.14, A2.30, A2.40, A2.41, A3.10, A3.11, A3.40, A4.10, A4.11, A4.40, A5-1 - A5-4, A6-1 - A6-2, A7-1 - A7-4, A8-1 - A8-3, A9-1 - A9-2, A11-1 - A11-2, A2.41A, A3.40A, A7.6A	
	Structural	07/10/09
	S0.01 - S0.07, SL2.10 - SL2.40, SL2.11, SL2.21, SL2.31, SL2.12, SL2.22, SL2.32, SL2.13, SL2.23, SL2.33, SL3.10, SL3.11, SL3.30, SL3.31, SL3.40, SL4.11 - SL4.13, SL4.30 - SL4.32, SL4.41, SA2.11, SA2.12, SA2.41, SL2.10A - SL2.40A, SA2.41A	
	Water Fountain	07/10/09
	W0.10, W0.11, W0.12, W1.10, W1.11, W2.10, W2.11, W3.10, W4.10, W5.10 - W5.12, W6.10 - W6.12, W7.10, W7.11, W8.10, W9.10, W1.10A, W2.10A, W3.10A, W5.12A, W6.1-A, W7.10A, W9.10A	
	Mechanical	07/10/09
	M0.10, M0.20, M1.10, M2.10, M2.30, M3.10 - M3.30, M4.00	
	Plumbing	07/10/09

	P0.01, P2.10 - P2.12, P2.20 - P2.22, P2.30, P2.31, P2.40, P2.40A	
Electrical	E0.01, E1.10, E1.30, E1.40, E1.1C, E1.2C, E1.3A, E2.10 - E2.40, E3.10 - E3.40, E4.1 - E4.3	07/10/09
Technology	TE0.00, TE0.01, TE1.10 - TE1.40, TE4.00, TE1.10A - TE1.40A	07/10/09
Telecommunications	TC000, TC001, TC1.10 - TC1.40, TC201, TC202, TC301	07/10/09
Lighting	LD1.10 - LD1.40, LD1.2A, LD1.20A, LD1.40A	07/10/09
Waterproofing	WP1.00, WP1.20, WP2.20	07/10/09
Signage	SG0.00, SG2.00 - SG2.04, SG2.10 - SG2.40, SG0.00A, SG2.10A - SG2.40A	07/10/09
2	<u>Project Manual and Outline Specification, 100% Design Development</u>	07/10/09
3	<u>Basis of Design, 100% Design Development</u>	07/27/09
4	<u>Value Engineering/ Cost Cutting</u>	
	The following revisions will be included in the Construction Documents in order to reduce costs: 1) revise lighting; 2) reevaluate the best re-use of granite; 3) reduce quantity of demolished trees; 4) reduce quantity of media hydrants to 24; 5) Reduce thickness of 24-inch sire walls; 6) simplify concrete paving; 7) reduce price of furniture; 8) simplify elevator enclosure; 9) install directional flags on light poles; 10) simplify signage; 11) alternate structural scheme for Block 4 ramp; 12) alternate fountain finish materials; 13) simplify event technology; 14) alternate paving in garden areas.	
5	<u>Alternates</u>	
	The following alternates will be included in the Construction Documents (all other alternates are not included): 1) Block 2 Children's Garden; 2) alternate planting in Block 3; 3) Block 4 Broadway terrace extension; 4) expanded technology; 5) Block 4 light towers; 6) replace existing paving; 7) interactive jets and lights in membrane pool (grotto waterfall is not included).	
6	<u>Exclusions</u>	
	The following items are excluded from the Park Improvements: 1) Starbucks tenant improvements; 2) LEED certification; 3) kiosks; 4) Equipment, low voltage system, furniture for office, maintenance, security, park support or other interior spaces; 5) gas systems; 6) parking equipment or systems; 7) Hill Street Parking Booth; 8) new cross walks and signalization work.	

**EXHIBIT C**  
**PARK BUDGET**

**HARD COSTS (\$45,000,000.00)**

Hard Cost	\$44,200,000.00
County Costs	\$800,000.00

**SOFT COSTS (\$11,000,000.00)**

Pre-Development	\$1,111,347.84
Professional Fees	\$4,749,830.00
Project Management	\$2,000,000.00

Staff, office rent, office  
supplies and equipment only

Other Soft Costs	\$1,585,122.16
------------------	----------------

Testing, inspection, legal,  
presentation materials,  
reimbursable expenses  
(includes Developers insurance  
and reimbursable expenses)

Soft Cost Contingency	\$430,000.00
Grand Avenue Committee funding	\$258,000.00
Pre-Opening	<u>\$865,700.00</u>

<b>TOTAL BUDGET</b>	<b>\$56,000,000.00</b>
---------------------	------------------------

**EXHIBIT D**

**PARK DEVELOPMENT AGREEMENT**

[to be attached]

**CIVIC PARK DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE COUNTY OF LOS ANGELES**

**AND**

**GRAND AVENUE PARK DEVELOPMENT, LLC**

**DATED \_\_\_\_\_, 2009**

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## **CIVIC PARK DEVELOPMENT AGREEMENT**

THIS CIVIC PARK DEVELOPMENT AGREEMENT (this "**Agreement**" or the "**Park Development Agreement**") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between THE COUNTY OF LOS ANGELES ("**County**"), a political subdivision of the State of California and GRAND AVENUE PARK DEVELOPMENT, LLC, a Delaware limited liability company ("**Park Developer**").

### **RECITALS:**

A. The Grand Avenue Project includes the redevelopment of an approximately twelve (12) acre area that is owned by County, which consists of the current Civic Center Mall (also known as El Paseo de los Pobladores), including the Court of Flags, and a parcel of land east of the Court of Flags and bounded by Spring Street on the east, a portion of which is more particularly depicted and described on Exhibit A-1 attached hereto ("**Blocks 1, 2 & 4**"), and the remaining portion of which is more particularly depicted and described on Exhibit A-2 attached hereto ("**Block 3**"; and together with Blocks 1, 2 & 4, collectively, the "**Park Parcel**").

B. The purpose of this Agreement is to set forth the rights and obligations of Park Developer and County concerning the design and construction of the improvements at the Park Parcel described on Exhibit B (the "**Park Improvements**"; and together with the Park Parcel, collectively, the "**Park**").

C. Concurrently herewith, County and Park Developer are entering into that certain Lease Lease-Back Agreement (the "**Lease**"), whereby Park Developer shall lease the Park Parcel from County pursuant to the terms and conditions therein for the purpose of facilitating the constructing of the Park Improvements in two (2) separate phases. The first phase shall consist of Blocks 1, 2 & 4 ("**Phase One**") and the second phase shall consist of Block 3 ("**Phase Two**").

D. The budget for hard and soft costs associated with the design and construction of the Park Improvements is attached hereto as Exhibit C (as it may be amended from time to time, the "**Park Budget**"). The Park Budget currently contemplates a total cost of the Park Improvements in the not-to-exceed, aggregate amount of Fifty-Six Million Dollars (\$56,000,000) and shall be funded by, (i) funds in the aggregate amount of Fifty Million Seven Hundred Fifty Thousand Dollars (\$50,750,000), including all interest accrued thereon, held by County on behalf of Authority that were paid by GALA to Authority under the DDA and related documents in connection with the Grand Avenue Project, and (ii) Nine Hundred Seventy Thousand Dollars (\$970,000) in bond proceeds, under an agreement under Proposition 40 (i.e., the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002) with the City of Los Angeles (the "**City**"). Any increase in the Park Budget above the aforementioned amount is contingent upon disbursement by the State of California to Authority of bond proceeds under California State Proposition 1C (i.e., the California Housing and Emergency Shelter Trust Fund Act of 2006) for the development of certain infrastructure.

E. County desires to engage Park Developer to contract for, and manage the design and construction process of, the Park Improvements (the "**Park Developer Work**"), specifically

set forth herein, and Park Developer desires to undertake the Park Developer Work on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree, in consideration of the mutual covenants and agreements herein, as follows:

## ARTICLE 1. DEFINITIONS

**1.1 Capitalized Terms.** Capitalized terms used herein shall have the meanings set forth below. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Lease and Civic Park Design Agreement.

**"Acceptance Date"** means, in respect of the applicable Phase, the date on which Substantial Completion is achieved for such Phase.

**"Agreement"** has the meaning set forth in the Introduction.

**"Architect"** means Rios Clementi Hale Studios, a California corporation.

**"Architect's Agreement"** means that certain Park Design Services Agreement/Consultant Contract for Civic Park dated as of January 13, 2009, by and between Park Developer and Architect.

**"Authority"** means the Grand Avenue Authority.

**"Blocks 1, 2 & 4"** has the meaning set forth in the Recitals.

**"Block 3"** has the meaning set forth in the Recitals.

**"CEO"** means the Chief Executive Office of the County designated and authorized by County to act as County's representative for the purpose of performing certain of County's obligations set forth hereunder and under the Lease.

**"Change Order"** has the meaning set forth in Section 4.1(f).

**"City"** has the meaning set forth in the Recitals.

**"Claim"** and **"Claims"** each has the meaning set forth in Section 11.1.

**"Construction Contract"** has the meaning set forth in Section 4.1(b)(2).

**"Construction Report"** has the meaning set forth in Section 4.6(i).

**"Construction Work"** means construction of the Park Improvements and other incidental work related thereto.

**"Contingency Amount"** means the amount of the Hard Cost Line Item remaining after subtracting the GMP from the Hard Cost Line Item, which amount may be used to pay for any

approved Change Orders pursuant to Section 4.1(f)(3). Any funds used therefor shall further reduce the Contingency Amount.

**“Contractually Require”** means that (i) Park Developer shall include a provision in the Construction Contract that requires the General Contractor to perform the applicable obligations specified in this Agreement, and (ii) Park Developer shall use its commercially reasonable efforts to manage the General Contractor’s performance of such obligations under, and in accordance with, any such provision.

**“County Indemnified Parties”** has the meaning set forth in Section 11.2.

**“County Project Representative”** has the meaning set forth in Section 5.2.

**“County”** has the meaning set forth in the Introduction.

**“CRA”** means the Community Redevelopment Agency of Los Angeles.

**“Damages”** has the meaning set forth in Section 11.1.

**“Data”** has the meaning set forth in Section 13.11.

**“DDA”** means that certain Disposition and Development Agreement dated as of March 5, 2007, by and between GALA and Authority.

**“Dedicated Team”** has the meaning set forth in Section 4.3.

**“Delay Notice”** has the meaning set forth in Section 4.7(b)

**“Developer Indemnified Parties”** has the meaning set forth in Section 11.1.

**“Dispute”** has the meaning set forth in Section 14.1.

**“Effective Date”** has the meaning set forth in Section 2.1.

**“EIR”** has the meaning set forth in Section 4.6(g)

**“Excusable Delay”** has the meaning set forth in Section 4.7(a).

**“Final Completion”** means, in respect of the applicable Phase, the date on which (i) Substantial Completion has been achieved for such Phase, (ii) the items on the Punchlist for such Phase have been completed as certified by CEO and the Architect, and (iii) all documents required to be delivered to CEO pursuant to the Architect’s Agreement and Construction Contract have been delivered to CEO for such Phase.

**“General Contractor”** has the meaning set forth in Section 4.1(b)(2)

**“GAC”** means the Grand Avenue Committee.

**“GALA”** means Grand Avenue L.A., LLC, a Delaware limited liability company.

**“GMP”** means, in respect of the applicable Phase, the guaranteed maximum price for the Construction Work required for such Phase.

**“Governing Entities”** has the meaning set forth in Section 4.1(d)

**“Ground Lease”** means that certain Phase I Ground Lease dated as of March 5, 2007, by and between GALA and Authority.

**“Hard Cost Line Item”** means the line item in the Park Budget under Hard Costs entitled “Hard Cost” that describes the amount to be paid for the Construction Work.

**“Hazardous Materials Laws”** has the meaning set forth in Section 12.1(a)

**“Hazardous Materials”** has the meaning set forth in Section 12.1(c)(d).

**“Lease”** has the meaning set forth in the Recitals.

**“Major Change Orders”** has the meaning set forth in Section 4.1(f)(2)

**“Major Trade Subcontractors”** has the meaning set forth in Section 4.1(b)(4)(i)

**“Maximum Reimbursable Amount”** means the maximum, aggregate amount payable, pursuant to this Agreement, to Park Developer for Reimbursable Expenses. The Maximum Reimbursable Amount equals the total of the following line items in the current Park Budget: Hard Cost Line Item, Pre-Development, Professional Fees, Project Management, Other Soft Costs and Soft Cost Contingency. The Park Budget and the Maximum Reimbursable Amount may be amended as provided herein.

**“Nondiscrimination Factors”** has the meaning set forth in Section 4.8(b).

**“Non-Major Trade Subcontractors”** has the meaning set forth in Section 4.1(b)(4)(ii).

**“NTP”** has the meaning set forth in Section 4.5.

**“Park”** has the meaning set forth in the Recitals.

**“Park Budget”** has the meaning set forth in the Recitals.

**“Park Developer Costs”** has the meaning set forth in Section 6.2.

**“Park Developer Work”** has the meaning set forth in the Recitals.

**“Park Developer”** has the meaning set forth in the Introduction.

**“Park Developer’s Agents”** has the meaning set forth in Section 4.4.

**“Park Development Agreement”** has the meaning set forth in the Introduction.

**“Park Improvements”** has the meaning set forth in the Recitals.

**“Park Parcel”** has the meaning set forth in the Recitals.

**“Phase”** means either Phase One or Phase Two, as applicable.

**“Phase One”** has the meaning set for in the Recitals.

**“Phase One GMP”** has the meaning set forth in Section 4.1(b)(5).

**“Phase Two”** has the meaning set for in the Recitals.

**“Phase Two GMP”** has the meaning set forth in Section 4.1(b)(5).

**“Professional Standard”** has the meaning set forth in Section 4.4.

**“Project GMP”** has the meaning set forth in Section 4.1(b)(5).

**“Project Management Line Item”** means the line item in the Park Budget entitled “Project Management” that describes the amount to be paid for the Park Developer Costs.

**“Project Work”** means, collectively, the Construction Work and the Park Developer Work.

**“Proposed Revised Park Budget”** has the meaning set forth in Section 4.1(g).

**“Punchlist”** means, in respect of the applicable Phase, a list of minor touch-ups, corrections, and repairs, and completion of other minor work required by the Final Construction Documents.

**“Reimbursable Expenses”** has the meaning set forth in Section 6.2.

**“Release”** has the meaning set forth in Section 12.1(c)(5)(e).

**“Schedule”** has the meaning set forth in Section 4.1.

**“Substantial Completion”** means, in respect of the applicable Phase, the completion of the portion of Park Improvements applicable to such Phase as certified by the CEO and Architect that (i) such Park Improvements have been completed sufficiently that they can be used for their intended use, (ii) a certificate of occupancy (or functional equivalent) for the applicable portion of the Park has been obtained, and (iii) all applicable Construction Work for such Phase has been completed except for Punchlist items that do not materially interfere with the use of such portion of the Park.

## **ARTICLE 2. EFFECTIVE DATE; TERM**

**2.1 Effectiveness.** This Agreement shall become effective on the date upon which the applicable parties have fully executed and delivered (i) this Agreement and (ii) the Lease (the **“Effective Date”**).

**2.2 Term.** This Agreement shall terminate concurrently with the termination or expiration of the Lease.

### **ARTICLE 3. APPOINTMENT OF PARK DEVELOPER; PROJECT WORK**

**3.1 Park Developer Appointment.** County hereby hires Park Developer, as an independent contractor, to perform the Park Developer Work in accordance with this Agreement, and Park Developer hereby accepts such engagement as an independent contractor to County on the terms and conditions set forth herein.

**3.2 Performance of Park Developer Work.** Park Developer shall use commercially reasonable efforts to perform the Park Developer Work in accordance with the terms and conditions as set forth in this Agreement, which obligations are expressly conditioned upon the County satisfying its funding obligations to Park Developer as set forth herein.

### **ARTICLE 4. CONSTRUCTION MATTERS**

**4.1 Duties and Responsibilities.** Park Developer, County and CEO, as applicable, have the responsibilities and are authorized, to undertake the following tasks, in compliance with the Schedule of Performance attached hereto as Schedule 1 and incorporated herein (the "Schedule"), subject to modifications thereto as permitted herein and Excusable Delays described in Section 4.7:

(a) **General Contractor Recommendations and Approval.** The contractor(s) shall be selected by Park Developer pursuant to a competitive process whereby the ultimate selection of the contractor(s) is based upon a combination of the contractor(s)' qualifications and fee quote, as evaluated by Park Developer and approved by CEO. The final selection of the contractor(s) is conditioned upon the approval by CEO. Park Developer shall determine and recommend to CEO how to proceed with contracting for the construction of the Park Improvements, and whether to proceed with one general contractor for the entire project, or to use one general contractor for the relocation and redesign of the Ramps and a separate general contractor for the balance of the Park Improvements. CEO shall review such recommendations of Park Developer, and following such review, CEO shall approve or request revisions of Park Developer's recommendations. Once CEO has approved the approach to contracting for the Construction Work, which determination CEO shall make within twenty (20) business days following the submission by Park Developer to CEO of its recommendation, Park Developer will then proceed to seek qualified general contractors for construction of the Park Improvements, or, if it is determined that separate general contractors should be engaged for the Ramps and for the balance of the Construction Work, then Park Developer will seek qualified general contractors for each such portion of the Construction Work. Within the time established in the Schedule, subject to any Excusable Delays, Park Developer will then present to CEO for review, comment and approval the qualifications and records of at least three (3) licensed general contractors (to the extent that there are three (3) contractors that are qualified for the Construction Work at issue, in the reasonable, good faith judgment of Park Developer), per applicable portion of the Park Improvements, that are acceptable to Park Developer, who have recognized expertise and experience relative to performing the applicable portion of the Park Improvements. Within

fifteen (15) business days of receiving such information from Park Developer, CEO shall approve or disapprove any or all of such proposed general contractors.

(b) Bidding and Contracting. The bidding and contracting process shall continue as follows:

(1) Soliciting Bids and Contract Award. Following CEO's approval of at least two (2) of the proposed general contractors per applicable portion of the Park Improvements, and upon completion of approved Design Development Drawings for the Park Improvements pursuant to the Civic Park Design Agreement, Park Developer shall request bids from such approved general contractors for the overhead, fees and general conditions charges (including any mark-up on third-party costs and the cost of assisting Park Developer and County on value engineering) to be applied to the construction of the applicable portion of the Park Improvements. Park Developer shall provide to CEO copies of the bids, an analysis of the bidding and a recommendation as to which bid should be accepted within the time established in the Schedule, subject to any Excusable Delays. Within ten (10) business days of receiving such recommendation from Park Developer, based on such recommendation, CEO shall approve or disapprove of a contract award to a general contractor for each portion or all of the Park Improvements. Park Developer shall not award or enter into any contract with any general contractor without CEO's prior written approval.

(2) Construction Contract. Upon CEO's approval of a contract award to a general contractor for a portion of the Park Improvements, Park Developer shall negotiate and enter into a contract or contracts with such approved general contractor (individually and collectively, the "**General Contractor**") in a final form approved in advance by CEO for Park Developer's signature (individually and collectively, the "**Construction Contract**"). The Construction Contract shall be in a form approved in advance by CEO and Park Developer, which shall also include standard County terms and conditions set forth on Exhibit D attached hereto. CEO shall review and approve, disapprove or comment upon the Construction Contract within the time period after submission thereof established in the Schedule. Notwithstanding anything to the contrary in this Agreement, once the Construction Contract has been approved by County pursuant to this Section 4.1(b)(2), Park Developer's obligations to Contractually Require any provision shall be limited to the provisions actually included in such Construction Contract.

(3) Separate Agreements. If requested by Park Developer and subject to approval and negotiation of terms approved in advance by CEO, Park Developer may enter into a separate agreement with a contractor to provide pre-construction services for the applicable portion of the Construction Work, including assistance in "value-engineering" the design coordination of the phasing of the construction, estimating, scheduling, preparation of trade bid packages and other pre-construction work, for an agreed upon fee acceptable to CEO.

(4) Subcontracting. Upon completion of construction documents for the Park Improvements by the Architect, Park Developer shall Contractually Require the following to occur with respect to the General Contractor's solicitation of bids from subcontractors:

(i) With respect to subcontractors for work costing more than \$150,000 ("**Major Trade Subcontractors**"), Park Developer shall submit the qualifications of at least

three (3) Major Trade Subcontractors (two (2) for fountain Construction Work) to CEO for review. Within ten (10) business days of receipt of such qualifications, CEO shall review such qualifications and approve or disapprove the Major Trade Subcontractors from whom to solicit bids; and

(ii) Once CEO has approved the Major Trade Subcontractors, the General Contractor shall solicit bids from the Major Trade Subcontractors approved by CEO and, with respect to all other trades ("**Non-Major Trade Subcontractors**"), Park Developer shall Contractually Require the General Contractor to solicit bids from at least three (3) qualified Non-Major Trade Subcontractors where feasible, and Park Developer shall analyze such bids. In no event shall Park Developer approve any bids from Major Trade Subcontractors or Non-Major Trade Subcontractors without the prior approval of CEO.

(5) **GMP Determination.** Park Developer will Contractually Require the General Contractor to prepare the GMP for Phase One (the "**Phase One GMP**") and the GMP for Phase Two (the "**Phase Two GMP**"; together with the Phase One GMP, collectively, the "**Project GMP**"), including any additive alternates, based on the subcontractor bids for each trade together with the overhead, general conditions, contingency and fee amounts bid by the General Contractor as described more fully in Section 4.1(c). If the Project GMP is in excess of the Hard Cost Line Item, Park Developer and the General Contractor will prepare a list of cost cutting measures to bring the Project GMP within the Hard Cost Line Item. Thereafter, CEO shall select items in an effort to bring the Project GMP within the Hard Cost Line Item and shall request Park Developer to instruct the General Contractor to prepare and resubmit a revised Project GMP for such Construction Work.

(c) **Approval of the GMP.** Once Park Developer is ready to accept the proposed Project GMP provided by the General Contractor, Park Developer shall deliver the proposed Project GMP to CEO. The CEO shall review the proposed Project GMP, and make a determination regarding approval of the proposed Project GMP. If CEO does not approve the proposed Project GMP ten (10) business days after submission thereof by Park Developer, which approval shall be in CEO's sole discretion, Park Developer shall Contractually Require the General Contractor to seek new bids from additional subcontractors and/or to provide additional value engineering services in an attempt to reduce the Project GMP. Park Developer shall then submit a revised proposed Project GMP to CEO based on such rebidding and/or value engineering (including cost cutting), and the foregoing process shall be repeated until CEO has approved the Project GMP. If CEO does not approve the Project GMP after the submission of the first revised Project GMP, and the Project GMP is within the Hard Cost Line Item, Park Developer shall be granted an Excusable Delay. In no event shall Park Developer approve a proposed Project GMP without the prior written approval thereof by CEO. The Construction Contract shall include an obligation that, once the Project GMP has been approved pursuant to this Section 4.1(c), the General Contractor and Park Developer shall execute a supplement, amendment, modification or restatement of the Construction Contract setting forth the approved Project GMP. The Construction Contract shall provide that the approved Project GMP may be subject to increase, only after written approval by CEO and Authority, as applicable, and only to the extent it does not exceed the Hard Cost Line Item, in connection with (i) force majeure events (to be defined in the Construction Contract), (ii) Change Orders approved by CEO (or Authority, as applicable, pursuant to Section 4.1(f)) after the issuance of the approved Project

GMP, and (iii) changes in governmental requirements applicable to the Construction Work that were not known or could not reasonably have been known by the General Contractor or Park Developer at the time of submission of the GMP to CEO.

(d) Park Developer's Employees. Park Developer shall hire and retain as employees or independent contractors of Park Developer or cause to be hired and retained as employees or independent contractors of Park Developer, and not as employees or independent contractors of County, GAC, the Authority, the CRA, or the City (collectively, the "Governing Entities"), such personnel as may be required to properly perform the Park Developer Work. Subject to and without limiting County's obligation to reimburse Park Developer for costs for approved personnel under ARTICLE 6 of this Agreement, such employees' compensation, retention and performance shall be controlled exclusively by Park Developer, and Park Developer shall be responsible for such employees' compensation, retention and performance and for complying with all laws and regulations affecting such employment, including the provision of any benefits or compensation required by statute or contract.

(e) Documents. Park Developer shall deliver to County the originals of all guaranties and warranties, and provide copies of the Construction Contract, and Change Orders received by Park Developer.

(f) Change Orders. Prior to Park Developer's execution of the Construction Contract, Park Developer shall develop and submit to CEO for approval, in its sole discretion, and thereafter shall implement, a procedure for change orders to the Construction Contract (each, a "Change Order").

(1) Park Developer's Recommendation. During the course of the Construction Work, as Park Developer reasonably determines is necessary, Park Developer shall (i) make recommendations to CEO concerning necessary or desirable changes to the Construction Work under the Construction Contract, (ii) review requests for Change Orders from the General Contractor or CEO or Authority, (iii) submit recommendations to CEO concerning requested Change Orders, and (iv) negotiate the terms and conditions of proposed Change Orders prior to CEO or, if necessary under this Section 4.1(f), Authority's review and approval of Change Orders. Change Orders may be proposed by Park Developer or CEO or Authority, provided that in any case the cost of such Change Order does not cause the cost of the Construction Work to exceed the Hard Cost Line Item, subject to Section 4.1(f)(3).

(2) Procedure. The procedure for the approval of Change Orders shall (i) require that all Change Orders be submitted to CEO on an approved written Change Order request form, (ii) provide that, with respect to any Change Orders of more than \$150,000 ("Major Change Orders"), CEO shall review such Change Orders and make a recommendation regarding approval thereof to Authority, and if Authority determines, in its sole discretion, to approve such Major Change Orders within ten (10) business days of receipt for such request, such approval shall be evidenced by the execution by Authority or its authorized representative of a document approving the Major Change Order, (iii) provide that, with respect to Change Orders that are not Major Change Orders, CEO shall determine whether, in its sole discretion, to approve such Change Orders, and that approval thereof shall be evidenced by the execution by CEO of a document approving the Change Order within five (5) business days of receipt for such

request, and (iv) once approved in writing by CEO or Authority or its authorized representative, provide for processing of such approved Change Orders in a manner consistent with the applicable Construction Contract.

(3) Contingencies; Cost and Expense. If the cost and expense of a proposed Change Order is entirely covered by the Contingency Amount, upon CEO's and/or Authority's, as applicable, approval of such Change Order, such proposed Change Order may be charged to the Hard Cost Line Item. If the cost and expense of a proposed Change Order is not entirely covered by the Contingency Amount, Park Developer shall prepare and submit to CEO for its review and approval pursuant to Section 4.1(g), a Proposed Revised Park Budget showing the changes to the applicable line items affected by such proposed Change Order. The Authority's and CEO's approval of (i) such Proposed Revised Park Budget and (ii) any additional funding source that may be required will be conditions precedent to approval of such additive Change Order. If any such proposed Change Order is necessary to achieve Final Completion for such Phase, then Park Developer may give notice that it is proposing cost-cutting measures to bring Reimbursable Expenses, including the costs and expenses related to such Change Order, within the Hard Cost Line Item and Maximum Reimbursable Amount, or if necessary, that it is ceasing further Park Developer Work (or, as applicable, that it will cease further Park Developer Work at such time that the aggregate Reimbursable Expenses exhaust the Maximum Reimbursable Amount, or applicable portion thereof), unless and until Park Developer receives assurances from CEO, to Park Developer's reasonable satisfaction, that such cost-cutting measures are approved or that additional funds will be available to pay for the projected increased amount of Reimbursable Expenses due to such Change Order. Currently, the Park Improvements and Park Budget do not include Project Work and associated costs or expenses related to the following:

(i) Existing Conditions. Conditions existing as of the Effective Date not specifically shown on the Construction Document Drawings (including, without limitations, Hazardous Materials).

(ii) Waterproofing. Reviewing, analyzing, repairing and/or replacing existing waterproofing, with the exception of (i) the area of the new Grand Avenue ramps, (ii) specific locations where new structures directly connect to the existing park garage structure; and (iii) the fountain basin, as and where necessary.

(iii) Structural Issues. Structural analysis and/or structural upgrades to any existing structure. Notwithstanding the foregoing, because the Construction Work will occur on or near existing structures, (i) where the new loading on an existing structure is less than or equal to the existing loading, no further analysis is required, and (ii) where new loading exceeds the existing loading conditions, the affected structural components and related load path will be evaluated to ensure that the existing capacities are not exceeded. The new loading conditions on the existing structures will be analyzed to comply with Los Angeles County Building Code 2008, Chapter 34. The estimated additional loads are not expected to increase the seismic forces by more than 10%. Therefore, a global seismic analysis of the existing structure will not be performed.

(g) Park Budget and Amendments. Subject to ARTICLE 6, the total fees and costs payable to Park Developer for the Project Work cannot exceed the Maximum Reimbursable

Amount, as such Maximum Reimbursable Amount, together with the Park Budget, may be amended from time to time by written approval of Authority and CEO pursuant to this Section 4.1(g). All expenses in connection with the Project Work shall be charged to the proper line item in the Park Budget and, unless otherwise approved by CEO, no Park Budget line item expense may be classified or reclassified except as shown on the Park Budget. If (i) CEO determines that there are additional sources of funds available to augment the Park Budget, or (ii) otherwise required herein, upon request, Park Developer shall prepare and submit to CEO and Authority for their review and approval a revised version of the Park Budget and a revised Schedule to reflect any applicable proposed changes (a "**Proposed Revised Park Budget**"). The Proposed Revised Park Budget shall include proposed fees, if any, and costs payable to Park Developer for the Project Work, including Park Developer's incurred and projected Reimbursable Expenses aggregated to equal the Maximum Reimbursable Amount. Any Proposed Revised Park Budget which is approved in writing by Authority and CEO shall replace the then current Park Budget.

(h) Payment to the General Contractor. Park Developer shall Contractually Require the General Contractor to invoice Park Developer directly with a copy of such invoice simultaneously delivered to CEO. Upon receipt of each such invoice, Park Developer shall submit to CEO (i) recommendations as to whether (and to what extent) each invoice shall be paid, (ii) confirmation as to whether the Construction Work for which payment is requested has been performed satisfactorily, and (iii) a conditional lien release upon progress payment executed by the General Contractor related to such invoice and an unconditional lien release upon progress payment executed by the General Contractor related to the immediately preceding invoice. Within five (5) business days of receipt of payment for each invoice from CEO pursuant to ARTICLE 6, Park Developer shall pay the General Contractor accordingly.

**4.2 Approvals.** Each reference in this Agreement to the "approval" by County means the approval of the items in question by the Board of Supervisors of County acting in its sole discretion, except in those cases where the Board of Supervisors of County has delegated such approval authority to CEO, in which case approval by CEO of the items in question will constitute approval by County. Each reference in this Agreement to the "approval" by CEO means that the Board of Supervisors has delegated such approval authority to CEO. Each reference in this Agreement to "approval" by Authority means that County and Authority have agreed that such approval authority is allocated to and resides, at least in part, with Authority, in addition to CEO, as applicable.

**4.3 Standard of Performance; Dedicated Team.** Park Developer shall devote adequate and sufficient time and resources and shall Contractually Require the General Contractor to devote adequate and sufficient time and resources, to efficiently perform its duties under this Agreement and shall exercise the level of skill and efficiency that is reasonably equivalent to the level of skill and efficiency customarily exercised by first class and reputable developers in County of Los Angeles working on large-scale Class A projects. Without limiting the foregoing, Park Developer shall cause William Witte, Steve Eimer and Barry Widen (or their respective replacements that have experience in similar projects should one or more of such individuals be assigned to another project that is managed by any affiliate of Park Developer or are no longer employed by Park Developer or its affiliates) to be the responsible senior executives in charge of the Park Developer Work for Park Developer ("**Dedicated Team**") throughout the term of this

Agreement. Park Developer acknowledges that County has engaged Park Developer to perform the Park Developer Work hereunder based on Park Developer's reputation and experience in developing large scale Class A projects which include public areas comparable in quality and scope to the planned Park Improvements.

**4.4 Professional Standard.** From the inception of the Park Developer Work until the completion of the Park Developer Work, Park Developer shall perform, and require, and use commercially reasonable efforts to cause, the consultants engaged directly by Park Developer (such consultants directly retained by Park Developer (excluding the General Contractor and its subcontractors of any tier), to be known collectively as "**Park Developer's Agents**") to perform the Project Work hereunder by rendering services of a standard and quality that prevails among similar developers, and among similar consultants and engineers engaged in practice throughout the United States under the same or similar circumstances involving the construction of a project having characteristics that are similar to the Park (including, without limitation, the public nature, comparable scope, quality and schedule) (the "**Professional Standard**").

**4.5 Conditions Precedent to Issuance of NTP; Phasing.** The Park Improvements shall be constructed in two (2) separate phases, Phase One and Phase Two; although, if approved in advance by CEO, the Phases may overlap. Park Developer shall not authorize the General Contractor to commence any construction activities (including, without limitation, demolition or grading) for any Phase until CEO issues a notice to proceed (an "**NTP**") authorizing such action for such Phase. Notwithstanding anything to the contrary herein, (i) the NTP for Phase One shall be issued prior to the NTP for Phase Two, (ii) the NTP for Phase Two shall be issued only if it is determined, at the time the NTP for Phase Two is issued, that there are sufficient funds projected to be available in the Park Budget to achieve Final Completion for Phase Two, and (iii) the NTP for Phase Two must be issued by the Phase One Acceptance Date. Additionally, the issuance of an NTP is conditioned upon the occurrence or satisfaction of all of following conditions precedent:

(a) **Starbucks and ATMs.** CEO shall have made arrangements causing the existing Starbucks and automatic teller machines' presence and operations to be discontinued or continued in a manner that will not materially impede or impair the progress of the applicable Construction Work.

(b) **Bonds.** Park Developer shall have Contractually Required the General Contractor to deliver to County copies of labor and material payment bonds and payment and performance bonds, each in an amount not less than one hundred percent (100%) of the amount of the Construction Contract and naming County as obligee, to the extent commercially feasible. Said bonds shall be issued by a surety company licensed to do business in the State of California and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register of the U.S. Treasury Department.

(c) **Insurance.** Park Developer shall have Contractually Required the General Contractor to submit evidence of its compliance with the insurance requirements set forth in the Construction Contract.

(d) Permits. Park Developer shall have Contractually Required General Contractor to secure, any and all permits which may be required by County or any other governmental agency with jurisdiction over the applicable portion of the Construction Work, as provided in and in compliance with Section 4.6(d).

(e) List of Contractors. Only if requested by County, Park Developer shall have furnished to County for informational purposes only a list in a form acceptable to County of all contractors and subcontractors employed in connection with the Construction Work. If any Contractor is added to those so employed, Park Developer shall notify County in writing as provided above and as to the impact, if any, this addition will have on the Schedule.

#### **4.6 Supervision of General Contractor; Manner of Construction.**

(a) Schedule of Performance. Park Developer shall Contractually Require the General Contractor to construct the Park Improvements as provided in the Schedule and any schedule set forth in the applicable Construction Contract, subject to (i) modifications to the Schedule under Section 4.1(g) and elsewhere in this Agreement, and (ii) Excusable Delays under Section 4.7. In addition, County in writing, may modify the Schedule prior to or during the Project Work.

(b) Supervision of General Contractor. Subject to the limitations set forth in Sections 4.7 and 4.8, ARTICLE 5, ARTICLE 9, Park Developer shall Contractually Require the General Contractor (i) upon the issuance by CEO of the NTP (as defined in Section 4.5); to proceed diligently to perform the applicable Construction Work based on the applicable portion of the Final Construction Documents and in accordance with this Agreement (including, without limitation, Section 4.6(g)), (ii) once the General Contractor has commenced the applicable Construction Work, to diligently pursue each stage of such Construction Work to Final Completion, and (iii) to begin and complete all applicable Construction Work in accordance with the applicable portions of the Final Construction Documents within the times specified in the Schedule, subject to any Excusable Delays, or such necessary extension of said dates as may be granted by CEO in its reasonable discretion, or as provided in this Agreement.

(c) Permits. Park Developer shall Contractually Require the General Contractor to secure any and all permits that may be required by County or any other governmental agency with jurisdiction over the applicable Construction Work. The parties acknowledge that County is a permitting agency for the Park. County shall use commercially reasonable efforts to provide prompt, reasonable, and diligent assistance to Park Developer and the General Contractor in securing such permits, as applicable. It is contemplated that permits may separately be obtained for each Phase.

(d) Certificate of Occupancy. Park Developer shall Contractually Require the General Contractor to obtain one or more Certificates of Occupancy for the applicable portion of the Park.

(e) Construction Safeguards. Park Developer shall Contractually Require the General Contractor to erect and properly maintain at all times, as required by the conditions and the

progress of the Construction Work performed by or on behalf of the General Contractor, all reasonably necessary safeguards for the protection of workers and the public.

(f) Notice to County; Damage to Public Improvements. Park Developer shall use commercially reasonable efforts to keep CEO fully apprised of the progress of the Construction Work so that CEO staff may timely inspect the Park Parcel to assure proper safeguarding of any publicly-owned improvements existing on or around the Park Parcel, including but not limited to underground conduits and utility lines. If any such publicly-owned improvements are damaged in connection with said construction activity, Park Developer shall Contractually Require the General Contractor to repair such damage immediately at no cost or expense to County, per the terms and conditions of the Construction Contract or, in the event that General Contractor fails to effectuate such repair within five (5) business days after written notice from Park Developer or CEO (or such longer period as may be reasonably required to complete such repair so long as the General Contractor commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), then Park Developer shall notify CEO who may cause such repairs to be made itself at the cost of the General Contractor (without waiving any other rights, remedies or claims that County may have at law or in equity).

(g) EIR Compliance. Prior to County's execution of this Agreement, Authority, as lead agency, and the CRA and County, as responsible agencies, have considered and certified an Environmental Impact Report (the "EIR") and a Mitigation and Monitoring Program and related conditions of approval. Park Developer shall Contractually Require the General Contractor to comply with the requirements governing the development and construction of the Park Improvements contemplated in the EIR and Mitigation and Monitoring Program, which are attached hereto as Exhibit E.

(h) Construction Signs. Park Developer shall Contractually Require the General Contractor to provide construction site signs in accordance with the requirements of County, identifying the project and giving recognition to the public agencies and officials as approved by CEO. Such construction site signs shall be erected on the Park Parcel at the time provided in the Schedule, subject to any Excusable Delays, and in locations mutually acceptable to Park Developer and CEO.

(i) Construction Reports. While the Construction Work is continuing, Park Developer shall Contractually Require the General Contractor to provide to Park Developer and CEO a monthly construction report which shall describe the applicable Construction Work completed to date, the causes for any delays, and the applicable Construction Work that is anticipated for the following month (the "Construction Report"). Each Construction Report shall be in substantially the form agreed to by Park Developer and CEO, and shall include a reasonable number of construction photographs taken since the last Construction Report was submitted by the General Contractor.

#### **4.7 Force Majeure, Excusable Delays, Extension of Times of Performance.**

(a) Excusable Delays. Performance by Park Developer shall not be deemed to be in default where delays or defaults are due to causes beyond the reasonable control of Park Developer to the extent such causes materially impact the performance of the Park Developer

Work or the Construction Work, which may include, as applicable: (i) war, (ii) insurrection, (iii) suspension or abandonment of work through strikes, labor disputes, boycotts or walkouts, (iv) riots, (v) acts of God (including floods, earthquakes, fires and other major catastrophes), (vi) acts of the public enemy, (vii) failure of or delay in the availability of any public utility, (viii) shortages encountered in transportation, fuel or material, (ix) governmental restrictions or priority, (x) unusually severe weather, (xi) delay by any Governing Entity in rendering decisions, recommendations or approvals or disapprovals beyond the time periods required by the Schedule or otherwise, (xii) undisclosed, concealed conditions, or (xiii) the actively negligent or wrongful acts or omissions of any Governing Entity (an "**Excusable Delay**"), subject to Section 4.7(b). In the event an Excusable Delay occurs, then the deadline shall be extended for performance by Park Developer of each of its subsequent obligations hereunder on a day-for-day basis for each day that the Excusable Delay is occurring. If Park Developer is entitled to a payment pursuant to the terms of the Lease or this Agreement and County fails to timely make such payment, such failure to pay shall constitute an Excusable Delay. Any delay in Park Developer's performance of the Park Developer Work hereunder directly caused by the actions required by County to remedy or otherwise address conditions described in ARTICLE 12 shall constitute an Excusable Delay. All actual and reasonable costs associated with an Excusable Delay shall be deemed a Reimbursable Expense.

(b) Procedures. Park Developer shall deliver notice to CEO specifically identifying any claimed Excusable Delay ("**Delay Notice**") as soon as reasonably practicable upon learning of the basis for such claimed Excusable Delay (which may include an accumulation of events which taken as a whole would constitute an Excusable Delay), but in any event no later than ten (10) business days after learning of the basis for such claimed Excusable Delay. An extension of time for an Excusable Delay shall be on a day-for-day basis for each day that the Excusable Delay is occurring, which period shall commence to run from the time of the commencement of the cause of the Excusable Delay. For purposes of this Section 4.7, a cause shall be beyond the reasonable control of the party whose performance would otherwise be due only if and to the extent such cause would prevent or hinder the performance of an obligation by any reasonable person similarly situated and shall not apply to causes peculiar to the party claiming the benefit of this Section.

(c) Exceptions. Any delays resulting from breach, non-performance, active negligence, or malfeasance on the part of Park Developer in the course of the performance of its duties hereunder shall not constitute Excusable Delays. Accordingly, Park Developer shall not be entitled to any extension of its time for performance under this Agreement due to such breach, non-performance, active negligence or malfeasance.

(d) Unforeseen Obstacles. If, during the course of the Construction Work, the General Contractor discovers defects in or problems with the garage structure on which some of the Park Improvements will be constructed, or other existing conditions materially affecting the Construction Work that are not currently known to Park Developer, then any delay in the performance of Park Developer's obligations hereunder directly related thereto shall constitute an Excusable Delay provided that Park Developer delivers the notice required by Section 4.7(b) to CEO.

**4.8 Compliance with Applicable Laws and County Policies.** Park Developer shall include the following provisions of this Section 4.8 in the Construction Contract; provided, however, that (i) with respect to the provisions set forth in Sections 4.8(b), (e) and (f) CEO shall monitor and enforce compliance with such provisions by the General Contractor or any other subcontractor or materialman performing the Construction Work or furnishing supplies to the Park, (ii) with respect to the provisions set forth in and Section 4.8(c), the CRA shall monitor and enforce compliance with such provisions by the General Contractor or any other subcontractor or materialman performing the Construction Work or furnishing supplies to the Park, and (iii) upon becoming actually aware of any violations of the following by General Contractor or any other subcontractor or materialman performing the Construction Work or furnishing supplies to the Park, Park Developer shall notify CEO.

(a) Local, State and Federal Laws. The General Contractor shall construct the Park Improvements in conformity with all applicable laws.

(b) Non-Discrimination During Construction; Equal Opportunity. The General Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, medical condition, age, marital status, domestic partner status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) acquired or perceived, or retaliation for having filed a discrimination complaint ("Nondiscrimination Factors"); the General Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated without regard to the Nondiscrimination Factors during employment including, but not limited to, activities of: upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship; the General Contractor will post in conspicuous places, available to employees and applicants for employment, the applicable nondiscrimination clause set forth herein; the General Contractor will ensure that its solicitations or advertisements for employment are in compliance with the Nondiscrimination Factors; and the General Contractor shall cause the foregoing provisions to be inserted in all contracts and subcontracts for the Construction Work entered into after the Effective Date; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

(c) CRA/Local Hiring Requirements. The General Contractor shall comply with the local hiring requirements of the CRA/Authority regarding construction employers on CRA assisted projects attached hereto as Exhibit F. Notwithstanding anything to the contrary set forth in the Construction Contract, in the event of a default by the General Contractor under Exhibit E, the remedies set forth in Exhibit F shall apply to such default, and such default, alone, shall not entitle County to any other remedies under the Construction Contract.

(d) Forum Selection. The General Contractor shall submit to the jurisdiction of the courts of the State of California. The exclusive venue of any action brought by General Contractor, on General Contractor's behalf or on the behalf of any subconsultant or subcontractor, which arises from the Construction Contract or is concerning or connected with services performed pursuant to the Construction Contract, shall be deemed to be in the courts of the State of California located in County of Los Angeles, California.